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**Addis Ababa University School of Law Graduate Studies**

**Implementation of Multilateral Environmental Agreements (MEAs)  
In Ethiopia**

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**A Thesis Submitted to School of Law Graduate Studies in Partial  
Fulfillment of the Requirements for the Master of Law (LL.M)**

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## Declaration


I, **Ashenafi Haile Degefa**, hereby declare that this thesis is original and has never been presented in any other institution. I also declare that primary and secondary information used has been duly acknowledged in this thesis.

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## Approval sheet

Advisor: Dejene Girma (PhD) Signature \_\_\_\_\_ Date \_\_\_\_\_

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Examiner: Melese Damtie(PhD) Signature \_\_\_\_\_ Date \_\_\_\_\_

## Acronyms

ABS	Access and Benefit Sharing
CBD	Convention on Biological Diversity
EPE	Environmental Policy of Ethiopia
EBSAP	Ethiopia Biodiversity Strategic Action Plan
EIA	Environmental Impact Assessment
EPA	Environmental Protection Authority
FAO	Food and Agriculture Organization
FDRE	Federal Democratic Republic of Ethiopia
GRs	Genetic Resources
IEL	International Environmental Law
IBCR	Institute of Biodiversity Conservation and Research
ICJ	International Court of Justice
ITPGR	International Treaty on Plant Genetic Resources
MEAs	Multilateral Environmental Agreements
MEF	Ministry of Environment and Forestry
MoA	Ministry of Agriculture
PIC	Prior Informed Consent
UNEP	United Nations Environmental Program
UNCED	United Nation Conference on Environment and Development
UNFCCC	United Nation Framework Convention on Climate Change
UNGA	United Nations General Assembly
UNCHE	United Nations Conference on Human and Environment
VCLT	Vienna Convention on the Law of Treaties
WCED	World Conference Environment and Development
WSSD	World Summit on Sustainable Development
WTO	World Trade Organization

## CHAPTER ONE

### Introduction

#### 1. 1. Background

The development of international environmental law has been part of a larger transformation in the subject matter of international law. In the twentieth century, international law expanded in two directions to include (1) how states treat their own citizens (i.e., human rights law) and (2) how states and other international actors cooperate to achieve common ends such as economic development and social welfare. The development of international environmental law has been part of this second transformation and is founded on the common interest of humankind in protecting the natural environment.<sup>1</sup>

On the international level the United Nations Conference on Human Environment held in Stockholm in 1972, the Stockholm Declaration contains 26 principles, an action plan consisting of 109 separate recommendations, and a resolution dealing with institutional and financial arrangements<sup>2</sup>, the 1987 Brundtland Report of the World Commission on Environment and Development which reexamined environmental and development issues.<sup>3</sup> And the United Nations Conference on Environment and Development (UNCED) that was held in Rio de Janeiro in June 1992. Thus, the UNCED adopted the Rio Declaration on Environment and Development, Agenda 21 (a blueprint for managing the environment in the 21st century), the UN Framework Convention on Climate Change, the Convention on Biological Diversity, and a statement of principles on forests which are the major events and agreements concerning environmental issues and development.<sup>4</sup>

As a member of the international community Ethiopia has been part of several policies and binding legal instruments on environmental issues. Ethiopia has adopted and ratified many multilateral environmental agreements<sup>5</sup>; which according to the FDRE Constitution<sup>6</sup> become integral part of the law of the land.<sup>7</sup>

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<sup>1</sup>see, DANIEL BODANSKY, *The Art and Craft of International Environmental Law* Harvard University Press Cambridge, Massachusetts London, England 2010 p.18

<sup>2</sup> The UN Conference on the Human Environment (The Stockholm Conference), 1972

<sup>3</sup> see, Peter Malanczuk Akehurst's *Modern Introduction to International Law* 7th revised ed. p. 241.

<sup>4</sup> Ibid.

<sup>5</sup> such as, The Convention on Biological Diversity (here in after called CBD), The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal and Basel Ban Amendment; The Bamako

In terms of geographical location, Ethiopia is situated in the northern part of the tropical zone, with extreme variety in the altitude of its territory. It has different rainfall patterns, and a wide variety of biological diversity. The country's topography includes extremely low elevations such as Dalol which is at 110 meters below sea level and on the opposite end of the spectrum, Mount Ras Dashen 4,620 meters above sea level. The Ethiopian economy is predominantly based on agriculture, which constitutes about 50 per cent of the GDP and 90 per cent of exports as well as 84 per cent of total employment.<sup>8</sup> However, the state has been trying to transform its agrarian economy to an industrial one and has been undertaking preliminary projects targeted to bring to such a transformation. Furthermore, due to the market liberalization since 1991, private capital has increasingly been invested in some modest industries and agro-industry sectors. Needless to say that these and other similar development interventions have had important repercussions on the environment.

## 1. 2. Literature review

In dealing with MEAs implementation we don't find a comprehensive study undertaken in case of Ethiopia. However, there have been various attempts to discuss and review on environmental issues of the country such as studies conducted in Environmental Impact Assessment(EIA), sustainable development, environmental protection. The first literature conducted by Mellese Damtie and Mesfine Bayou entitled *Overview of Environmental Impact Assessment in Ethiopia, Gaps and Challenge*,<sup>9</sup> the other literature in this is Mulugeta's work entitled, *The Ethiopian Environmental Regime Versus International Standard: Policy, Legal and, Institutional*

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Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa, The International Treaty on Plant Genetic Resources for Food and Agriculture, The Convention on International Trade in Endangered Species of Wild Fauna and Flora; The United Nations Framework Convention on Climate Change and its Kyoto Protocol and The United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa; See also The FDRE Constitution Art 9(4)

<sup>6</sup> see, Proclamation No. 1/1995 Proclamation of the Constitution of the Federal Democratic Republic of Ethiopia, *NEGARIT GAZZET* 1'1Year No.1

<sup>7</sup> Ibid. Article 9(4)

<sup>8</sup> see, Alemayehu Geda, Reading on the Ethiopian Economy (with contribution by: Abebe Shimeles, Danial Zerfu, & John Weeks) Addis Abeba University Press p.45

<sup>9</sup> see, Mellese Damtie & Mesfine Bayou, *Overview of Environmental Impact Assessment in Ethiopia, Gaps and Challenge*, Melca Mahiber, 2008, Addis Ababa, Ethiopia

*Framework, Environmental Permitting In Ethiopia:*<sup>10</sup> Authored by three researchers an article entitled, ENVIRONMENTAL PERMITTING IN ETHIOPIA: NO RESTRAINT ON “UNSTOPPABLE GROWTH”?,<sup>11</sup> another work is entitled *ENVIRONMENTAL IMPACT ASSESSMENT AND MONITORING UNDER ETHIOPIAN LAW*<sup>12</sup> also reviewed the law of EIA which was enacted in 2002 and analyze the monitoring system in Ethiopia, Fekremarkos Merso has also a contribution entitled *COUNTRY REPORT: ETHIOPIA Green Growth, Investment, Environment and Sustainable Development in Ethiopia*,<sup>13</sup> Dejena Girma, ENVIRONMENTAL IMPACT ASSESSMENT IN ETHIOPIA: LAWS AND PRACTICES<sup>14</sup>, this work is one of the most comprehensive studies in respect of environmental impact assessment in Ethiopia and similarly he also produced several researches among others, examined the GTP document *vis-a-vis* environmental protection, *THE PLACE OF ENVIRONMENTAL PROTECTION IN THE GROWTH AND TRANSFORMATION PLAN OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA*.<sup>15</sup> In fact these are not exhaustive and there may also be other scholars who have made contributions to the environmental regime from different perspective such as the right to development, clean environment and public participation on environmental concern. It is however evident that the above mentioned literature have contribution to the recent and future development policy agenda and this research also will suppose to build up its finding on the existing efforts.

Most of the literature available in the area have thus far given particular emphasis to either EIA or sustainable development and Environmental rights. This differs from the later, it will attempt that to analyze implementation aspect international environmental law in Ethiopia.

### **1. 3. Statement of problem**

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<sup>10</sup>see, Mulugeta, *The Ethiopian Environmental Regime Versus International Standard: Policy, Legal and Institutional Framework, Environmental Permitting In Ethiopia*: Haramaya law Review Vol. 1No. 1 Spring 2012.

<sup>11</sup>see, Jams Kruger ,et al ENVIRONMENTAL PERMITTING IN ETHIOPIA: NO RESTRAINT ON “UNSTOPPABLE GROWTH”?, Haramaya law Review Vol. 1No. 1 Spring 2012.

<sup>12</sup>see, *Tesfaye Abate Abebe*, ENVIRONMENTAL IMPACT ASSESSMENT AND MONITORING UNDER ETHIOPIAN LAW. Haramaya law Review Vol. 1No. 1 Spring 2012.

<sup>13</sup>see, Fikremarkos Merso (PhD), *COUNTRY REPORT: ETHIOPIA Green Growth, Investment, Environment and Sustainable Development in Ethiopia*, 5 *IUCNAEL E Journal*.

<sup>14</sup>see, *DEJENE GIRMA JANKA* (PhD), ENVIRONMENTAL IMPACT ASSESSMENT IN ETHIOPIA: LAWS AND PRACTICES, A DISSERTATION Submitted in partial fulfillment of the requirements for the degree of Doctor of Philosophy in the Department of Interdisciplinary Studies in the Graduate School of The University of Alabama TUSCALOOSA, ALABAMA (2012)

<sup>15</sup>see, *DEJENE GIRMA* (PhD) *THE PLACE OF ENVIRONMENTAL PROTECTION IN THE GROWTH AND TRANSFORMATION PLAN OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA*. *Oromia Law Journal [Vol 2, No.2]*

Since the EPRDF government took power in 1991, Ethiopia has been taking different reform measures with regard to its economy. It declared the 1995 FDRE constitution<sup>16</sup> and continued to introduce and employ several policy and legal regimes, *inter alia* economic policy, environmental policy and many other legislation which affect environmental protection. It is a remark of the beginning of new regime and pattern for social, political, economic and development in the country that aiming at, among others, to build one economic community.

The constitution provides environmental rights and policy objectives.<sup>17</sup> These provisions in conjunction with Article 92<sup>18</sup> of the constitution and subsequently enacted laws including the country's international commitment with regard to environmental protection may be tantamount to a standard in connection with development and environment. Drawing this line of policy direction or statement in constitution, has a clear objective. It clearly provides that the country track of growth and development trajectory must be consistent with international commitment and take in to account environmental degradation.

Recently the economic activities have been of the country intensified unprecedentedly. Due to economic openness, the rate of Foreign Direct Investment (FDI) is ever increasing. The state has concluded several bilateral economic cooperation including investment protection as well as grant and loan agreement with Middle East, Asian, European countries, and international finance and development organizations.<sup>19</sup> This policy change has been successful in bringing a double digit growth rates in the country's economy.

Nonetheless, there are both theoretical and practical allegation against the above mentioned rapid economic activities intensification in connection with environmental degradation. It is obvious fact that human intervention in to the environment has caused environmental damage. And one

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<sup>16</sup> *Supra note 6, see Chapter Ten " National Policy Principles and Objectives"*

<sup>17</sup> *Ibid., The FDRE constitution provisions Article 43 The Right to Development*

1.The Peoples of Ethiopia as a whole, and each Nation, Nationality and People in Ethiopia in particular have the right to improved living standards and to sustainable development. and

*Article 44 Environmental Rights*

1. All persons have the right to a clean and healthy environment.

<sup>18</sup> *Ibid., Article 92 Environmental Objective 1.Government shall endeavor to ensure that all Ethiopians live in a clean and healthy environment*

<sup>19</sup> *see, Cooperation and Bilateral economic Agreement conclude between and among many states with Ethiopia, HPR Ratification proclamation within the last Five and Six years. Available at <http://www.hopr.gov.et/> accessed date, February 12,2014*



can easily figure out the relationship of economic development and environmental degradation as dependent variables.

In the past years studies have shown that environmental degradation in Ethiopia is the result of development activities that look only at short-term technical feasibilities and economic benefits; this problem remains in some sectors.<sup>20</sup> And the trend of environmental problem has appeared as a result, *inter alia*, of weak environmental law provisions, inefficient law implementation and lack of regulatory legal regime.<sup>21</sup> Indeed, international environmental law implemented via national legislation, institution and experts some researches identify the problem to mention some of them, the laws relating to the use of EIA are inadequate<sup>22</sup>, low enforcement capacity, legal lacunae in the implementation of policy documents.<sup>23</sup> It is not enough merely to sign and ratify MEAs instead, Ethiopia is required to transform those international instruments into its national laws and bring about their strict enforcement.

#### **1. 4. Objective of the research**

The general objective of this research is to make appraisal of MEAs implementation in Ethiopia. Further, the research has specific objectives. These are: To carry out analysis of Ethiopian environmental law to see whether they address international obligation, to examine issues of international environmental law principles those incorporated in Ethiopian laws, to analyze implementation of national environmental laws in light of international obligation, and to identify problems associated with implementation of international and national laws in the area. Therefore, the paper will focus on the specific problem on the national implementation of

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<sup>20</sup>see, Mellese Damtie & Mesfine Bayou, *Overview of Environmental Impact Assessment in Ethiopia*, Gaps and Challenge, Melca Mahiber, (2008), Addis Ababa, Ethiopia. p.5-6

<sup>21</sup>see, Fekremarkos Merso(PhD), COUNTRY REPORT: ETHIOPIA Green Growth, Investment, Environment and Sustainable Development in Ethiopia, p.170 *Tesfaye Abate Abebe ENVIRONMENTAL IMPACT ASSESSMENT AND MONITORING UNDER ETHIOPIAN LAW*, p. 122-123 and Mulugeta THE ETHIOPIAN ENVIRONMENTAL REGIME VERSUS INTERNATIONAL STANDARDS: POLICY, LEGAL, AND INSTITUTIONAL FRAMEWORKS p.69 *Haramaya Law Review*, VOL. 1, NO. 1 Spring 2012 ISSN 2227-2178 and Mandefro, Implementations of EIA Laws in East Shawa Zone of Oromia National State Special Reference to Lume and Ada'a Woreda: Case Study on Various Projects

<sup>22</sup> *Supra note 14, see Abstract.*

<sup>23</sup>see, Mulugeta Getu, THE ETHIOPIAN ENVIRONMENTAL REGIME VERSUS INTERNATIONAL STANDARDS: POLICY, LEGAL, AND INSTITUTIONAL FRAMEWORKS *Haramaya Law Review*, VOL. 1, NO. 1 Spring 2012 ISSN 2227-2178. p.70

Convention on Biodiversity, International treaty on Plant Genetics Resources and Rotterdam Convention on the prior Informed Consent Procedure and discuss some incidental issues that come out in relation to this central problem.

### **1. 5 Research question**

The research will try to answer the following main and sub-question regarding MEAs; The main research question is, does Ethiopia follow the commitment it made and consistently adopt and implement the obligations? Beside this general question, the research in due course substantiate the following sub-questions:

1. Are MEAs implemented in accordance with the obligation under the agreements?
2. Are Ethiopia environmental law implemented consistently with well established international mechanisms and techniques?

### **1. 6 Significance of the research**

1. The research findings are very useful in order to demonstrate the problems of environmental law implementation vis-a-vis international commitment.
2. The research findings help, environmental law implementing agencies to consider the comment and recommendation of research while designing laws and strategies in implementation of MEAs.
3. The findings are relevant as a background source for those who would like to investigate more as to international environmental law implementation in Ethiopia.

### **1. 7 Method of the research**

With regard to the method employed to solve the research problem and present the analysis, I used a conventional doctrinal legal research method. Most of the research section will spend much for textual analysis and will give balanced space for deliberation on MEAs (treaties execution). Further, it will extensively review of environmental laws which have parallel to MEA in corroborate with primary and secondary sources such as books, journal articles, commentaries and case laws. Further, the research will also goes to inquire the matter through interview of key informant, observation, review country report and assess the tendency of institutional implementation arrangement.

### **1. 8 Scope of the research**

This research would be limited to the international Environmental law and particular area of implementation in the case of Ethiopia, It may seem too broad however it will undertake only MEAs to which Ethiopia is a party and. The investigation is limited to few MEAs, i.e. CBD, International treaty on plant genetic resources for food and agriculture, also known as the *seed treaty*, and Rotterdam convention. The reason for opting these instrument is that, it is not possible to address all MEAs an LLM thesis.

### **1. 9 limitation of the Research**

While conducting the research, the researcher might face some major challenges like; officials may not be interested to give an interview, it will be difficult to access information as regards compliance of substantive and procedural standard. Lack of documented profile of development projects which passed through EIA and other environmental supervisory procedure.

### **1. 10 Organization of the Paper**

The first section of this work will mainly focus on the general background of international environmental law and its development records through different periods. The paper will then provide discussion on selected Multilateral Environmental Agreements(MEAs) to which Ethiopia is a party in connection with treaty aspect. Hence, the research will chiefly examine the Ethiopian measures and efforts towards implementation on selected MEAs.

## CHAPTER TWO

### 2. Emergence and Development of International Environmental law

#### Introduction

In the same vein of other specialized fields of international law, the theoretical construction of environmental law has much relationship and background with other disciplines or fields. Most principles and rules of international environmental law were originally conceived from interdisciplinary context. The traditional state centric approach conceptualizes international environmental problems in terms of the mutual rights and responsibilities of polluting and victim states.<sup>24</sup> Yet international environmental law has evolved considerably from its state-centric and roots now it encompasses a much wider set of concern<sup>25</sup> such as common concerns<sup>26</sup>, future generation,<sup>27</sup> environmental protection as an end itself.<sup>28</sup> The nexus of environmental law and other field comes from environmental problems conceptually arising from multiplicity of causation, since the entire environment is interdependent and the emergence of International Environmental Law (IEL) has a complex causation relationship with economic (trade and investment), political, cultural, science and technology and the question of justice.<sup>29</sup>

Alongside multiple causal relationship, there were also different parties participated, the three main 'actors' the state, civil society and business had played pivotal role in crafting environmental law, regulation and governance. This enables the development of a more sophisticated and nuanced account of how and why environmental architectures have shifted in particular directions, the consequences of those shifts, and the virtues of using complementary combinations of policy instruments harnessing a variety of stakeholders as surrogate regulators.<sup>30</sup>

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<sup>24</sup> see, DANIEL BODANSKY, JUTTA BRUNNE & ELLEN HEY, *The Oxford Handbook of INTERNATIONAL ENVIRONMENTAL LAW*, Oxford University press, year(July 2006), p. 10

<sup>25</sup> Ibid. p. 11-15

<sup>26</sup> Ibid

<sup>27</sup> Ibid

<sup>28</sup> Ibid

<sup>29</sup> Dereje Zeleke(PhD)class lecture of International Environmental course(March, 2013) International Environmental Law combine both international and national law because it combines from private law and industrial code of conduct, national law also govern the import and export of the nation, whereas international law deals about transboundary harm, the duty of a state to prevention of harm of global common and long term intergenerational equity.

<sup>30</sup> see, Neil Gunningham, *Environment Law, Regulation and Governance: Shifting Architectures* *Journal of Environmental Law* 21:2, Published by Oxford University Press, Advance Access published on 30 April 2009, p. 181-182, This discussion provided in the manuscript, each of the parties had play significant role in their jurisdiction

## 2. 1. Emergence and Development of International Environmental law

As stated above, the concept and principle of IEL evolve from different discipline, occasions and debate of parties or actors. The Stockholm Conference for instance has produced the Stockholm Declaration on the Human Environment. Some believed that the declaration should begin with a sweeping articulation of every human being's right to a wholesome environment. A rights approach, however, did not prevail. The declaration adopted an anthropocentric approach to the protection of the environment, as the full title of the declaration denotes: "Declaration of the United Nations Conference on the Human Environment."<sup>31</sup> A well-known provision of the Stockholm Declaration is Principle 21. Principle 21 serves a double function.<sup>32</sup>

In the one hand, "state have in accordance with the charter of United Nations and the principles of international law, the sovereign rights to exploit their own resources pursuant to their own environmental policies, and on the other hand, the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states to area of beyond their jurisdiction." It asserts the sovereign right of states to exploit their natural resources and it also provides the prevention of environmental harm through demonstrating state's responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or areas beyond the limits of national jurisdiction.<sup>33</sup>

The United Nations Conference on the Environment and Development (Rio de Janeiro, 1992), known as UNCED and more familiarly as Rio, has been a legal landmark. It produced the

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as to formulating their aspiration. for example: developed countries enacted legislation (Direct regulation of this nature took a variety of forms, the most common of which involved environmental standards imposing uniform requirements (maximum emission concentrations or introduction of a prescribed technology) Id, p.184

<sup>31</sup>see, Elli Louka, *International Environmental Law, Fairness, Effectiveness, and World Order*, Cambridge University Press, UK.(2006) p. 30.

<sup>32</sup> Ibid, p. 31, see Declaration of United Nations on Conference on the Human Environment, principle 21. Probably the most significant provision common to the two declarations(Stockholm and Rio)relates to the prevention of environmental harm. In identical language, the second part of both Stockholm Principle 21 and Rio Principle 2 establishes a State's responsibility to ensure that activities within its activity or control do not cause damage to the environment of other States or to areas beyond national jurisdiction or control. This obligation is balanced by the declarations' recognition, in the first part of the respective principles, of a State's sovereign right to "exploit" its natural resources according to its "environmental" (Stockholm) and "environmental and developmental" policies (Rio). While at Stockholm some countries still questioned the customary legal nature of the obligation concerned, today there is no doubt that this obligation is part of general international law. Thus in its Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons* first, and again more recently in the *Case concerning Pulp Mills on the River Uruguay*, the International Court of Justice expressly endorsed the obligation as a rule of international customary law. Moreover, the *Pulp Mills* decision clearly confirms that the state's obligation of prevention is one of due diligence.

<sup>33</sup> Ibid.

Convention on Biological Diversity (CBD), which in turn has been complemented by the Cartagena Protocol on Biosafety and followed by the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGR)<sup>34</sup> and others. The dynamic quality of international environmental law issues has necessitated the development of more dynamic and flexible standard-setting processes.<sup>35</sup> During this time, the concepts become solidified and formulated into legal principles, and then gradually became binding rule of international law. Treaties remain the basis of most international environmental regulation. But in most international environmental regimes, they no longer reflect a static set of rules agreed to by states for an indefinite period of time.<sup>36</sup> Instead, they establish iterative processes, which allow international environmental law to develop more rapidly in response to the emergence of new problem and new knowledge and understanding.<sup>37</sup>

The development of international environmental law dates back to the classical Greek, in 2000BC then come to in a particularly dramatic illustration of man's power to change the environment, the society of Easter Island collapsed in the sixteenth century, apparently as a result of overpopulation and deforestation, recent observations indicate that, economic development may help explain the growth of environmental awareness.<sup>38</sup> As societies grow richer, they can afford to focus not just on the provision of basic human necessities, such as food and housing, but also on "luxury goods," such as a cleaner environment.<sup>39</sup>

Most of the major developments in international environmental law have had their origin in science. As several disasters hit different parts of the world researcher come up with argument that anticipate the future fate of the earth and gave suggestions.<sup>40</sup> And the growing scientific consensus about the reality, causes, and severity of global warming, reflected in the reports of the Intergovernmental Panel on Climate Change, have helped propel the development of the

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<sup>34</sup> *see*, Law and Development Since Rio-legal Trend in Agriculture and Natural Resources Management, FAO legal Office, FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS, Rome, 2002, available [http://www.fao.org/docrep/005/Y3872E/y3872e0e.htm#TopOfPage\(source\)](http://www.fao.org/docrep/005/Y3872E/y3872e0e.htm#TopOfPage(source)) access date sep 25, 2014, p. 1

<sup>35</sup> *see*, DANIEL BODANSKY *et al*, The Oxford Handbook, *supra* note 24, p. 21

<sup>36</sup> *Ibid*

<sup>37</sup> *Ibid*

<sup>38</sup> *Supra note*, 1 p.21

<sup>39</sup> *Ibid*

<sup>40</sup> *Ibid*

international climate change regime.<sup>41</sup> Scholars have drawn a road map of IEL development in general reference to fundamental juncture starting from the last century in particular on the second half of twenty century.

According to D. Bodansky from the emergence of international environmental law, three cycles or waves can be discerned: (1) a conservationist stage, focusing on the protection of wildlife, stretching from the late nineteenth century through the first half of the twentieth century; (2) a pollution- prevention stage, spanning the so- called environmental revolution of the 1960s and early 1970s, marked by the Stockholm Conference, the establishment of the United Nations Environment Program (UNEP), and the negotiation of numerous multilateral agreements, particularly in the field of marine pollution; and (3) a sustainable development phase, beginning in the mid- 1980s with the work of the Brundtland Commission and continuing through the 1992 Earth Summit and the 2002 Johannesburg Summit up to today. Each successive stage has not displaced its predecessors. Rather, the phases have had a cumulative quality, and, today, the international environmental landscape includes elements of all three.<sup>42</sup>

P. Sands come with a separate illustration of periodization. The evolution of international environmental law can be classified into four distinct periods. He provides International environmental law has evolved over at least four distinct periods, reflecting developments in scientific knowledge, the application of new technologies and an understanding of their impacts, changes in political consciousness and the changing structure of the international legal order and institutions.<sup>43</sup>

According to Sands, the first period began with bilateral fisheries treaties in the nineteenth century, and concluded with the creation of the new international organizations in 1945. During this period, peoples and nations began to understand that the process of industrialization and development required limitations on the exploitation of certain natural resources (flora and fauna) and the adoption of appropriate legal instruments. The second period commenced with the creation of the UN and culminated with the UN Conference on the Human Environment, held in Stockholm in June 1972. Over this period, a range of international organizations with

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<sup>41</sup> Ibid, p. 19-20

<sup>42</sup> Ibid p. 21

<sup>43</sup> see, PHILIPPE SANDS, PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW 2nd edition, (2003) Cambridge University Press, P. 25

competence in environmental matters was created, and legal instruments were adopted, at both regional and global level, which addressed particular sources of pollution and the conservation of general and particular environmental resources, such as oil pollution, nuclear testing, wetlands, the marine environment and its living resources, the quality of freshwaters, and the dumping of waste at sea.

The third period ran from the 1972 Stockholm Conference and concluded with the UN Conference on Environment and Development (UNCED) in June 1992. During this period, the UN tried to put in place a system for co-coordinating responses to international environmental issues, regional and global conventions were adopted, and for the first time the production, consumption and international trade in certain products was banned at the global level. The fourth period was set in motion by UNCED, and may be characterized as the period of integration: when environmental concerns should, as a matter of international law and policy, be integrated into all activities. This has also been the period in which increased attention has been paid to compliance with international environmental obligations, with the result that there has been a marked increase in international jurisprudence.<sup>44</sup>

In sum, both scholar's discourses approximately provide a common understanding on the steps of development, however this is beyond this work. As we have seen the development of the subject's historical track record, first, the development of principles and rules of international environmental law through treaties, other international acts and custom has tended to react to events or incidents or the availability of scientific evidence, rather than anticipating general or particular environmental threats and putting in place an anticipatory legal framework.<sup>45</sup> Secondly, developments in science and technology have played a significant catalytic role. Without the availability of scientific evidence, new rules of law are unlikely to be put in place.<sup>46</sup> Thirdly, as is reflected throughout their respective work, the principles and rules of international law have developed as a result of a complex interplay between governments, non-state actors and international organizations.<sup>47</sup>

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<sup>44</sup> Ibid, p. 26

<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

The extent to which a particular area is subject to legal rules will depend upon pressure being imposed by non-state actors, the existence of appropriate institutional fora in which rules can be developed, and sufficient will on the part of states to transform scientific evidence and political pressures into legal obligations. And, fourthly, it is only within the past decade that issues of international environmental law have become a regular subject of international adjudication, and that international courts and tribunals have begun to contribute to the definition and application of the subject.<sup>48</sup>

During this evolutionary time, environmental law concept has been developed in to normative value. Firstly, they were not binding; rather they were merely provided as a policy statement, then after different issues involved such as debate and discussion, cases in national and international tribunal, some of the principle altered in to a binding rule then they have been solidify in to a more binding normative provisions substantively and procedurally.<sup>49</sup> Multilateral Environmental Agreements(MEAs) are tools for managing relationships with the environment,

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<sup>48</sup> Ibid, *see also*, The *Lac Lanoux* case involved a decision taken by France (an upstream state) to build a barrage on the Carol River for the purposes of hydroelectricity production. France intended to divert the waters of the Carol River before returning them to Spain, where they would be used for agricultural irrigation. Spain claimed that the diversion of waters by France was against its interests, despite the eventual restitution of waters to their original destination. Because the restitution of waters was dependent on the will of France, Spain claimed that one party was preponderant in water management. Such preponderance was against the equality of the parties established in the water treaties that had been signed between the parties. *Neuclear test case France v. Australia and Newzland*. The *Nuclear Tests* cases have influenced the development of international environmental law, not for the eventual conclusions of the Court, but because of the *dicta* included in the Court's ordering of provisional measures and the pleadings of the parties and in taking these provisional measures, the Court took into account the claims of Australia and New Zealand regarding their right to "be free from atmospheric nuclear tests by any country." In ordering the interim measures, the Court noted the claims formulated by the government of Australia.

<sup>49</sup> *see*, The *Trail Smelter* case has launched a discourse in international law about whether a standard of state responsibility or strict state liability has been established for polluting activities. As the tribunal required that the polluting acts must be "of serious consequence" and that the injury must be established by clear and convincing evidence. These requirements set a high threshold for the establishment of a standard of state liability. Policy makers must clarify two points:

- The polluting activities must be "of serious consequence." Because some form of pollution is part of everyday life, the amount and nature of pollution that is significant for the establishment of a strict liability claim under international law must be clearly established.
- There must be clear and convincing evidence of harm. This is a difficult requirement to meet, as the *Trail Smelter* case itself demonstrates. Most of the damage to environment is hard to establish, as the scientific evidence is often inconclusive. International court Of justice (ICJ) in its 1996 advisory opinion on the *Legality of the threat or use of nuclear weapons*, An ICJ advisory opinion on the legality of the use of nuclear weapons has been cited frequently as an affirmation of the principles of international environmental law stated in the *Trail Smelter* case and again, in its 1997 Judgment in the case concerning *Gabchikov-Nygamagiso project (Hangary v. Slovakia)*, provide a detail analysis as to the status of sustainable development under international law. Various WTO dispute panel decisions and International conferences such as Stockholm declaration, the Rio Declaration on Environment and Development, adopted by United Nation General A/Conf.151/5/Rev.1.13 June 1992 has gotten much contribution to the development of environmental law.

for which there is increasing need. The vast majority of MEAs have been adopted since the 1972 United Nations Conference on the Human Environment (UNCHE), often referred to as the Stockholm Conference.<sup>50</sup>

As it is new field which became crystallized since 1970's International Environmental Law has characteristics. For example there are a lot of agreements fully concerned about environment, but unlike the trade law there were a lack of strong and centralized institution or a solid customary rule, and there had not been effective environmental governance that can strongly coordinate its implementation. UNEP was established in 1972 during Stockholm conference to take this role. Since its establishment UNEP has made several efforts to implement internationally agreed objectives.<sup>51</sup>

The subject of international environmental law does not lag its' development even in recent time. The world is still following the ongoing phenomenon and trying to addressing issues and continues the development of the existing principles and strengthening institutional cooperation to achieve the environmental and related objectives. The World Summit on Sustainable Development (WSSD) was held in Johannesburg in September 2002. It was generally focused on the eradication of poverty.<sup>52</sup> The WSSD Plan of Implementation was long on general commitments and aspiration, but short on specific actions to been taken.<sup>53</sup> The summit adopted

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<sup>50</sup> *see*, Multilateral Environmental Agreement Negotiator's Handbook Second Edition:(2007) available at [http://unfccc.int/resource/docs/publications/negotiators\\_handbook.pdf](http://unfccc.int/resource/docs/publications/negotiators_handbook.pdf) accessed May 10, 2013 p. 1-2

<sup>51</sup> UNEP undertake many activities and has a number programs, It promote cooperation on environmental policy between governments, UN agencies, other intergovernmental bodies, and groups and stakeholders. further, 1997 - Nairobi Declaration redefines and strengthens UNEP's role and mandate, It elaborate the core elements of the focused mandate of the revitalized United Nations Environment Programme should be the following: a) To analyse the state of the global environment and assess global and regional environmental trends, provide policy advice, early warning information on environmental threats, and to catalyse and promote international cooperation and action, based on the best scientific and technical capabilities available; b) To further the development of its international environmental law aiming at sustainable development, including the development of coherent interlinkages among existing international environmental conventions; c) To advance the implementation of agreed international norms and policies, to monitor and foster compliance with environmental principles and international agreements and stimulate cooperative action to respond to emerging environmental challenges; d) To strengthen its role in the coordination of environmental activities in the United Nations system in the field of the environment, as well as its role as an Implementing Agency of the Global Environment Facility, based on its comparative advantage and scientific and technical expertise; e) To promote greater awareness and facilitate effective cooperation among all sectors of society and actors involved in the implementation of the international environmental agenda, and to serve as an effective link between the scientific community and policy makers at the national and international levels; available, <http://www.unep.org/environmentalgovernance/> accessed September 15, 2014

<sup>52</sup> *Supra note* 43, p, 66-69. and *Ibid*.

<sup>53</sup> *Ibid*.

the Declaration on Sustainable Development and the Plan of Implementation. The declaration moved the environmental agenda closer to the concerns of developing countries.<sup>54</sup>

In Thirteenth Session of the Conference of the Parties to the UNFCCC Bali Action Plan was adopted “to launch a comprehensive process to enable the full, effective and sustained implementation of the Convention through long-term cooperative action...” The intention had been to reach an agreed outcome leading to the adoption of a decision at the COP 15 in Copenhagen in December 2009.<sup>55</sup> Instead, the conference produced a non-binding political declaration “the Copenhagen Accord,” negotiated by 28 states, which was intended to bridge the differences among parties while covering the pillars agreed in Bali.<sup>56</sup> As critical as these and related agreements were, however, the slow pace of international negotiations and continuing political and economic differences between industrialized and developing countries make for, at best, a very cautious assessment of the potential for this legal regime to ward against the more damaging yet entirely foreseeable climate harm scenarios.<sup>57</sup>

In the same manner the environmental governance were also attempted to centralized, which have been takes place under the auspicious of UNEP. Among others and recently, the Consultative Group of Ministers or High-level Representatives on International Environmental Governance convened in 2009 during UNEP’s Governing Council session and concluded its work at a meeting in Helsinki in November 2010.<sup>58</sup> Moreover, the UN Climate Change Conference in Durban, South Africa, took place from 28 November to 11 December 2011. Thereafter, the Doha Climate Change Conference COP 18 and CMP 8 were held 26 November 2012. The UN Climate Change Conference in Cancun, Mexico, also took place in December 2010, as we have seen, since Copenhagen climate change conference the trend has focused on

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<sup>54</sup> *Supra note 31*, p.35-38.

<sup>55</sup> *see*, Human Rights and Climate Change *A Review of the International Legal Dimensions* Siobhan McInerney-Lankford, Mac Darrow, and Lavanya Rajamani, *World Bank Study* Climatic changes--Law and legislation. 2. Global warming--Law and legislation. 3. Human rights. I. World Bank. K3585.5.H86 2011 344.04'6--dc22 Available <http://siteresources.worldbank.org/INTLAWJUSTICE/Resources/HumanRightsAndClimateChange.pdf> p.3-4

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*

<sup>58</sup> *see*, Maria Ivanova, *Global Governance in the 21st Century, Rethinking Environmental Pillar*, University of Massachusetts Boston, available [www.environmentalgovernance.org](http://www.environmentalgovernance.org) accessed November, 23, 2014. p. 9.

climate change and it became dominant global agenda aiming at produce a legally binding instrument.<sup>59</sup>

### 2. 3. Principles of international environmental law

Given the above sections as a process of foundation to international environmental law, in this section I will mention principles. Since Stockholm Declaration the major principles those well recognized in international environmental law have gradually evolved into binding rules and a reflection of development of the idea that environmental law has reached hegemonic position in international and municipal legal system too.

The explosion of international environmental treaty-making over the last 40 years suggests a diminished role for other types of international law, including custom and general principles. Nevertheless, many writers still consider non- treaty norms as an important source of international environmental law.<sup>60</sup> Authors argue, for example, that: States must take precautionary actions against environmental risks, rather than waiting for scientific certainty.<sup>61</sup> States have a duty to prevent significant transboundary harm, and to provide notice and engage in consultations concerning possible harms.<sup>62</sup> States must take steps to protect endangered species (or, more fancifully, whales have an emerging right to life under customary international law).<sup>63</sup> The current generation owes a duty to future generations to preserve and transmit the Earth's natural assets. Meanwhile, expert groups have spent considerable time and effort attempting to codify what they regard as the general (non- treaty) norms of international environmental law.<sup>64</sup>

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<sup>59</sup> *see*, Summary of the Doha Climate Conference, Earth Negotiation Bulletin. A Reporting Service for Environment and Development negotiations, *Vol. 12 No. 567 Published by the International Institute for Sustainable Development (IISD ) Tuesday, 11 December 2012* available <http://www.iisd.ca/climate/cop18/emb> accessed September, 20 2014.

<sup>60</sup> *Supra note 1*, p.191

<sup>61</sup> *Ibid.* *see also*, JONATAN B.WIENER The Oxford handbook of International Environmental Law, Oxford University press, year(July 2006), p. 599 The PP is an important and perhaps the most controversial-development of international environmental law in the last two decades. Today the forecast is partly confirmed: 'If international environmental law were to develop Ten Commandments, the precautionary principle would be near the top of the list'. Yet the controversy continues: 'the precautionary principle may well be the most innovative, pervasive and significant new concept in environmental policy over the past quarter century. It may also be the most reckless, and arbitrary, and ill advised'.

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

<sup>64</sup> *Ibid.*

Principles are general in the sense that they are potentially applicable to all members of the international community across the range of activities which they carry out or authorize and in respect of the protection of all aspects of the environment. From the large body of international agreements and other acts, it is possible to discern general rules and principles which have broad, if not necessarily universal, support and are frequently endorsed in practice. These are: that states have sovereignty over their natural resources and the responsibility not to cause transboundary environmental damage; the principle of preventive action; the principle of co-operation; The principle of sustainable development; the precautionary principle; the polluter-pays principle; and the principle of common but differentiated responsibility.<sup>65</sup> These principles are recognized in international environmental law and in dominant literature. They are incorporated in the soft-law (declarations) such as Stockholm, Rio and in post Rio resolution of international and regional institutions. Many of them go through the process of normative crystallization and make a progress towards enable to deal issues in separate subject in a distinct legal framework. For this development scholars and courts also made a remarkable contribution to have a legally binding authority, International Law Commission has been made significant contribution to this assignment.<sup>66</sup>

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<sup>65</sup> *Supra note 43*, p. 231, Principle of Environmental Impact Assessment, Principle of prior notification, Common heritage of mankind, Intergenerational equity are also in one or the other way incorporated in to the existing principles or in some point stand alone as implementation technique. see also *supra note 53, 54*. The term 'sustainable development' is generally considered to have been coined by the 1987 Brundtland Report which defined it as 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs' that would mean states can utilize their natural resources must only to the extent of its capacity of the environment without compromising sustainability of the future or without degrading the environment. see also, United Nations Report of the World Commission on Environment and Development: Our Common Future available [http://conspect.nl/pdf/Our\\_Common\\_Future-Brundtland\\_Report\\_1987.pdf](http://conspect.nl/pdf/Our_Common_Future-Brundtland_Report_1987.pdf) accessed May 14, 2013

<sup>66</sup> UNGA assigned International law Commission (ILC) The ILC is a group of legal experts established by the UN General Assembly whose purpose is the codification and development of international law. which is entrusted to the progressive development of international law and codify the provisions; in this regard it has a number of attempts to the development of international environmental law in general, Non-navigational Use of International Watercourse in particular. see also case concerning *GabCikovo-Nagymaros Project (Hungary v. Slovakia)*, *Judgment, I. C. J. Reports 1997*, Separate opinion of judge weeramantry, He further clarify the point "The principle of sustainable development is thus a part of modern international law by reason not only of its inescapable logical necessity, but also by reason of its wide and general acceptance by the global community. The concept has a significant role to play in the resolution of environmentally related disputes. The components of the principle come from well-established areas of international law human rights, State responsibility, environmental law, economic and industrial law, equity, territorial sovereignty, abuse of rights, good neighbourliness to mention a few. It has also been expressly incorporated into a number of binding and far-reaching international agreements, thus giving it binding force in the context of those agreements. It offers an important principle for the resolution of tensions between two established rights. It reaffirms in the arena of international law that there must be both development and environmental protection, and that neither of these rights can be neglected. available, <http://www.icj-cij.org/docket/files/95/7521.pdf> accessed August 29, 2013 Para.140.

### **2. 3. Techniques of implementation of MEAs**

International environmental law might be implemented in many ways or by using various techniques, yet Environmental Impact Assessment (EIA) is an important implementation tool in our time. Environmental impact assessments are needed, for instance, for most development projects, independent of whether they affect air quality, water, or species diversity.<sup>67</sup> The right to information and participation in decision making applies to a large number of environmental issues.<sup>68</sup> Many treaties contain requirements for the exchange of information among states or for state reporting to institutions established under a treaty either about the level of state compliance or regarding the state of the environment.<sup>69</sup> Exchange of information, prior notification, consultation, and informed consent are considered the “staples” of many international treaties.<sup>70</sup> In chapter four the research will try to associate these implementation techniques into Ethiopian context in order to assess whether these techniques are duly incorporated at least as a principle and implemented.

### **2. 4. Compliance and Enforcement**

Ensuring compliance by members of the international community with their international environmental obligations continues to be a matter of increasing concern.<sup>71</sup> Over the years, a range of techniques have been adopted and used to improve compliance with environmental obligations, drawing upon other developments in international law.<sup>72</sup>

States implement their international environmental obligations in three distinct phases. First, by adopting national implementing measures; secondly, by ensuring that national measures are complied with by those subject to their jurisdiction and control; and, thirdly, by fulfilling obligations to the relevant international organizations, such as reporting the measures taken to give effect to international obligations.<sup>73</sup>

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<sup>67</sup> *Supra* note 31, p. 114, *see also*, *Supra* note 14 Dejene Girma (PhD), p. 16-18.

<sup>68</sup> *Ibid.*

<sup>69</sup> *Ibid.*

<sup>70</sup> *Ibid.*, p. 120

<sup>71</sup> *Supra* note 43, p. 171

<sup>72</sup> *Ibid.*, p. 172-173

<sup>73</sup> *Ibid.*, p. 174

Once a state has formally accepted an international environmental obligation, usually following the entry into force following of a treaty which it has ratified or the act of an international organization by which it is bound, it will need to develop, adopt or modify relevant national legislation, or give effect to national policies, programmes or strategies by administrative or other measures.<sup>74</sup> Some treaties expressly require parties to take measures to ensure the implementation of obligations, or to take appropriate measures within their competence to ensure compliance with the convention and any measures in effect pursuant to it.<sup>75</sup> Numerous agreements require parties to designate a competent national authority or focal point for international liaison purposes to ensure domestic implementation.<sup>76</sup>

National implementation constitutes key element in ensuring compliance with international environmental law.<sup>77</sup> Recent United Nation Environmental Programme (UNEP) guidelines on compliance with and, enforcement of multilateral environmental agreements (MEAs), encompasses *inter alia* all relevant laws regulations, policies and other measures and initiatives, that contracting parties adopt and/or take to meet their obligation under a multilateral environmental agreement and it's amendment if any.<sup>78</sup>

National implementation may be divided in to three separate, yet clearly related and overlapping parts: legislative, administrative and judicial implementation. National laws and regulation implementing substantive treaty obligations have the advantage over administration and judicial implementation of greater transparency and general clarity in the application of legal principles.<sup>79</sup> In the next sections I try to explores these and related obligations by sorting the basic principles of MEAs and governance system and how they have implement within their respective mandate.

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<sup>74</sup> Ibid, p .175

<sup>75</sup> Ibid.

<sup>76</sup> Ibid.

<sup>77</sup> see, CATRINE REDGWELL, Oxford hand book International Environmental Law, Oxford University press, year(July 2006) p. 923

<sup>78</sup> Ibid, p.924-925

<sup>79</sup> Ibid, p.929

## CHAPTER THREE

### 3. Multilateral Environmental Agreement and Obligations of Ethiopia

#### Thereunder

Treaties are one type of sources of international law in general<sup>80</sup> whereas MEAs are the predominant source of global environmental law. They might be considered as the lens through which global environmental law comes into focus as national environmental law. Discussion of the relationship between global and national environmental laws has its logical emphasis on the role of MEAs. As legally binding instruments, they are regarded as 'hard law', in comparison to non-legally binding 'soft law'.<sup>81</sup> Indeed MEAs are treaties pursuant to the Vienna Convention on the Law of Treaties<sup>82</sup> (VCLT) which define the term "treaty" in its Art 2 Para 1(a) as follows:

*"treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation;*

The VCLT definition works for all types of treaties whether bilateral, multilateral and even at regional level as far as the subjects are states and they have concluded an international agreement in written form and sign based on international law.<sup>83</sup> Treaty instruments with different names but comparable legal effect include treaty, conventions, protocols, agreements and legally binding exchanges of letters. VCLT also governs numerous aspects of treaties such as interpretation, dispute settlement amendment and reservation. MEAs are tools for managing relationships with the environment, for which there is increasing need. To deliver environmental results for the world, international community need to continue to negotiate on practical issues

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<sup>80</sup>see, The Statute of International Court of Justice(ICJ) Article 38 Para 1 specify the sources . The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: (a) **international conventions, whether general or particular, establishing rules expressly recognized by the contesting states (emphasis added)**

<sup>81</sup>see, Oxford Dictionary of Law 'soft law' (in international law) Guidelines of behavior, such as those provided by treaties not yet in force, resolutions of the United Nations, or international conferences, that are not binding in themselves but are more than mere statements of political aspiration (they fall into a legal/political limbo between these two states). Soft law contrasts with hard law, i.e. those legal obligations, found either in \*treaties or customary international law (see CUSTOM), that are binding in and of themselves. see also, The Blacks Law Dictionary Soft Law "Collectively rules, that are neither strictly binding nor completely lacking in legal significances" seventh edition.

<sup>82</sup>see, Vienna Convention on the Law of Treaties (VCLT) 1969 Done at Vienna on 23 May 1969, entered into force on 27 January 1980. United Nations, *Treaty Series*, vol. 1155, p. 331

<sup>83</sup> Ibid, Article 1. Scope of the present Convention, *The present Convention applies to treaties between States.*

and technical rules for implementation of existing agreements, as well as to address gaps and promote synergies.<sup>84</sup>

While we deal with the practice of implementation or enforcement of treaties or agreements it is often time the issue of determining their status that is debatable. International agreement domestication or incorporation is one of the conducts of foreign relation and engagement. Indeed, it is not simple as routine business of the government; instead, it is something which binds the states on international plane and even in the national jurisdiction and thus it should be undertaken in a careful manner. It is also a controversial issue in connection with implementation. As per international law treaty making norm, VCLT each country may stipulate either in their constitution or other statute as to which authority have a power of representation and full power to enter into an agreement. In this regard Ethiopia provided the power as to how and in what manner international agreements are signed and ratified to make it effective in its' constitution.<sup>85</sup> Article 86 of the constitution in paragraph 3 provides general direction-observance of international agreements as another foreign policy direction. Again, this is another hallowed basic principle of international law, in particular treaty law namely, the Principe of *pacta sunt servanda* meaning treaty is binding upon parties and must be performed by the parties in good faith.<sup>86</sup>

As per the constitution negotiation and signing of international agreement is an expression of a states consent to be bound which is one of the executive power and function of the government.<sup>87</sup> Particularly, it is the Ministry of Foreign Affair which can negotiate in consultation with other concerned body of the government to which specifically the issue is connected.<sup>88</sup>

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<sup>84</sup> *see*, Multilateral Environmental Agreement Negotiator's Handbook Second Edition: (2007) available [http://unfccc.int/resource/docs/publications/negotiators\\_handbook.pdf](http://unfccc.int/resource/docs/publications/negotiators_handbook.pdf) accessed October 20, 2013. p. 1-2

<sup>85</sup> *see* The Constitution of Art 55(12), 50(3) and 78(8) and 74(6)

<sup>86</sup> *Supra* note 3, VCLT Article 26.

<sup>87</sup> *see*, FDRE constitution *supra* note 7 Article 74(6) and 77(8)

<sup>88</sup> *Supra* note 82, VCLT Article 7 & 8 , *see also*, for example the case of Ethiopia FDRE Constitution Article 74(6) and 77(8), it followed by Article 15(3) of Proclamation No 691/2010

*"in consultation with the concerned organs, negotiate and sign, upon approval by the government, treaties that Ethiopia enters into with other states and international organizations, except in so far as such power is specifically given by law to other organs; and effect all formalities of ratification of treaties;"*

As to the legal status of these international agreements under Ethiopian legal system, the Ethiopian Constitution seems clear. The key provision in relation to the status of international law is Article 9(4). The article stipulates:

*"all international agreements ratified by Ethiopia are an integral part of the law of the land."* However, there have been some disagreements among authors on the status of treaties within the legal system. Some argue that, based on the above clause treaties have the same status as internal law enacted by the legislature. They are the law of the land. The only constitutional requirement that have to be met for international agreement to have the status of internal law is ratification by the competent constitutional authority.<sup>89</sup> In other words, no additional act by the legislature is required for international agreement to have immediate force of law in Ethiopia.<sup>90</sup>

### **3. 1. Multilateral Environmental Agreements**

Ethiopia is an active member of international community and it involves in the formulation and adoption of international environmental soft laws and agreements.<sup>91</sup> Ethiopia has also tried to take measures in order to incorporate the agreements and made efforts to ensure compliance and implementation, for instance, it ratified the following international environmental agreements, and created enabling environment for their implementation.<sup>92</sup>

1. The United Nations Convention on Biological Diversity<sup>93</sup>

2. International Treaty on Plant Genetic Resources for Food and Agriculture.<sup>94</sup>

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<sup>89</sup> *see, Getachew Assefa*, Is Publication of a Ratified Treaty a Requirement for its Enforcement in Ethiopia? A comment Based on W/Tsedale Demissie V. Ato Kifle Demissie: Federal Cassation File No, 23632, *Journal of Ethiopian Law*, December, 2009. Vol. XXIII No. 2 p. 166, As far as this issue is concerned controversy has not yet still rely on any settlement, for instances, issues usually involved in whether international human rights covenants are implemented within the national court of law or not yet stay other formalities. The existing scholarly writing on this issue has not resolve the controversy surrounding on it, the continuing and remarkable work, I hope will attempt to bring some opt out for the entire legal system. see also Fiseha Yimer Observation of International Law in the constitution of the FDRE.

<sup>90</sup> *Ibid.*

<sup>91</sup> *see*, UN Conferences Stockholm and Rio and later on sign and ratify several instruments, World Charter for Nature and etc; To give few examples, The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal and Basel Ban Amendment, and United Nation Convention on Biological Diversity.

<sup>92</sup> *see*, for example the latest effort those recognizes and protects substantive and procedural environmental right in the Constitution and further enacted different legislation and policy to address different environmental theme, such as, Environmental Policy of Ethiopia adopted by the council of minister (1997), Growth and Transformation Plan of 2011-2015 Vol. I Main document, Ministry of Finance and Economic Development, November 2011 Addis Ababa Re-establish institution adopt policy and endorse strategies for its execution.

<sup>93</sup> *see*, Biodiversity Convention ratification proclamation No 98/1994 Addis Ababa 31May, it has been signed by Ethiopia on June 10, 1992 in Rio de Janero, Brasil where the United Nation Conference on Environment and Development was held. see, United Nations Convention of Biological Diversity, 1992.

3 The Rotterdam Convention on Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (known as the Rotterdam Convention)<sup>95</sup>

Therefore, Ethiopia have fully comply with its obligations under the above instruments and those which are not mentioned here including regional environmental instruments.

### **3.2. Convention on Biological Diversity (CBD)**

Common Concern of Humankind holds that, due to the interdependent nature of ecology, humanity may have a collective interest in certain activities located wholly within state boundaries. Subjects like biodiversity and climate are considered to be common concerns of humankind, and states are expected to practice sound conservation and international cooperation in these areas.<sup>96</sup> The convention aims to maintain the balance between resource utilization and conservation of biodiversity, within the concept of sustainable use of its' components.<sup>97</sup> It ascribes sovereignty over their genetic resources to states in whose territory they are located, and seeks to regulate access to (and, implicitly, the harvest of) genetic resources on the basis of prior informed consent of the providing state, to be given on the mutually agreed terms that are to include provision by the exploiting state of a fair and equitable share of benefits.<sup>98</sup> To ensure the continued availability of these resources to human kind, providing states are however, obliged to facilitate access to their biological resources and not impose restriction contrary to the CBD objectives.<sup>99</sup>

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<sup>94</sup> *see*, Proclamation No. 330/2003 The International Treaty on plant Genetic Resources for Food and Agriculture, 9th Year No. 50, ADDIS ABABA-291h April, 2003 ' *see also*, International Treaty on Plant Genetic Resources for Food and Agriculture , United Nation Food and Agriculture Organization Adopted on the 3rd of November, 2001

<sup>95</sup> *see*, The Rotterdam Convention on the prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade ratification proclamation, 8<sup>th</sup> Year, No. 25, Proclamation No.278/2002

<sup>96</sup> *see*, The preamble of CBD which recognize the principle of "common concern of Humankind", however it found in the preamble it does mean that insignificant value rather it is an important persuasive value in considering the principle during implementation and interpretation of the entire convention, since it is a crucial basis within the realm of conservation and sustainable use of biodiversity which are ascertained in its objectives. This concept were exist in the UNESCO convention and the United Nation Convention on the Law of the Sea, nevertheless the UNESCO adoption of the concept were much wider than the latter, in both instrument the concept doesn't entail the exclusion of sovereign right. *see the detail discussion on Document of Commission on Plant Genetic Resources First Extraordinary session Rome 7-11, November 1994*

<sup>97</sup> *see*, United Nations Convention of Biological Diversity, 1992 Art. 1

<sup>98</sup> *Ibid.*

<sup>99</sup> *see*, Rosemary Rayfuse, BIOLOGICAL RESOURCES. The Oxford Handbook of INTERNATIONAL ENVIRONMENTAL LAW, Oxford University press, (first edition 2007) p.378 *see also*, GEOFF, TENSEY, Food Security, Biotechnology and Intellectual Property, A Discussion Paper, The CBD is a framework agreement that leaves parties free to implement it through their own legislation. It expressly reaffirmed the sovereignty of states

The CBD is characteristically a framework agreement that leaves tasks to the parties in order to implement it through their own legislation. It requires countries to take measures to ensure the conservation of biological diversity, sustainable use of its components and fair and equitable sharing of the benefits arising from the utilization of genetic resources.<sup>100</sup>

Ethiopia signed and ratified the Convention on Biological Diversity (CBD) during the transitional period.<sup>101</sup> Later on, the country signed and ratified both protocol, Cartagena protocol on biosafety and Nagoya protocols on access to genetic resources and benefit sharing arising from their utilization, in 2004 and 2012 respectively,<sup>102</sup> which intend to strengthen the implementation of the Convention. In general the Convention imposes several obligations on states parties both substantively and procedurally, but in this work we will not address each of the obligations. Yet we will soon in the next chapter ponder some of them, however only provisions essential in nature as regards implementation of them will be treated here.

The United Nations Convention on Biological Diversity clearly imposes obligations on states parties to attain its objectives. Based on its principle, which is derived from international law and

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over their genetic resources. It requires countries to take measures to ensure the conservation of biological diversity, sustainable use of its components and the fair and equitable sharing of the benefits arising from the utilization of genetic resources. It also made access to these subject to prior informed consent of the state rather than the community involved. The CBD developed from an approach which equated riches to be found in compounds in plants with minerals in the ground. Some developing countries felt they had undervalued wild biodiversity of use to developed countries and industries, such as pharmaceuticals, which had been making use of them in patented products bringing enormous returns. For agriculture, this mining, winner-takes-all mentality towards the exploitation of wild biodiversity pays scant attention to the differing nature of agricultural genetic resources, which have been developed, exchanged and mixed up around the globe for millennia. Indeed, some 'wild' biodiversity rich countries like Brazil, are agriculturally biodiversity poor, depending for most of their food on crops that came from elsewhere. Quaker United Nations Office, Geneva, July 2002 p.11

<sup>100</sup>*supra note 97*, Article I. Objectives

The objectives of this Convention, to be pursued in accordance with its relevant provisions, are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding. see also, CONVENTION ON BIOLOGICAL DIVERSITY AND RELATED RESOLUTION, Resolution 3, Rome 7-11 November 1994 First ordinary session Rome, Food and Agriculture Organization of United Nation.

<sup>101</sup>*see*, The Biodiversity Convention ratification proclamation No 98/1994 Addis Ababa 31May, it has been signed by Ethiopia on June 10, 1992 in Rio de Janeiro, Brasil where the United Nation Conference on Environment and Development was held.

<sup>102</sup>*see*, The ratification proclamation of both protocol, PROCLAMATION NO. 362/2003 A PROCLAMATION TO RATIFY THE CARTAGENA PROTOCOL ON BIOSAFETY TO THE CONVENTION ON BIOLOGICAL DIVERSITY and PROCLAMATION NO 753/2012 Nagoya protocol on access to genetic resources and benefit sharing arising from their utilization Ratification Proclamation(18th year No. 46 Addis Ababa 27th July 2012)

United Nations Charter<sup>103</sup> countries are required to fulfill their duty, hence they are supposed to take different measures to conserve biodiversity, to use it sustainably and facilitate access and to pursue equal and fair benefit sharing from utilization of genetic resources. One fundamental obligation borne by states is the obligation to develop national strategic plan or programmes for conservation and sustainable use of biodiversity based on countries specific conditions and capabilities.<sup>104</sup> Further, states would assume to integrate the issue of conservation and sustainable utilization of biodiversity with cross-sectored matters of decision making.<sup>105</sup> In addition, states as far as possible need to introduce appropriate procedures requiring environmental impact assessment with a view to avoiding or minimizing such effects and, where appropriate allow for public participation in such procedures.<sup>106</sup> So with regard to CBD, Ethiopia is required to take measures (1) develop national strategic plan or programme for the implementation of the entire objectives of the convention (2) introduce appropriate procedure requiring environmental impact assessment, and (3) allow for public participation in such procedures, and(4)introduce appropriate arrangements to ensure that the environmental consequences of its programmes and policies that are likely to have significant adverse impacts on biological diversity are duly taken into account.<sup>107</sup>

### **3.3. International treaty on Plant Genetic Resources for Food and Agriculture (ITPGR), the *Seed Treaty***

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<sup>103</sup>see, CBD Art. 3, Principle States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

<sup>104</sup>*Supra note 97*, Art. 6 of the CBD, *Article 6. General Measures for Conservation and Sustainable Use*

Each Contracting Party shall, in accordance with its particular conditions and capabilities:

- (a) Develop national strategies, plans or programmes for the conservation and sustainable use of biological diversity or adapt for this purpose existing strategies, plans or programmes which shall reflect, *inter alia*, the measures set out in this Convention relevant to the Contracting Party concerned; and
- (b) Integrate, as far as possible and as appropriate, the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes and policies.

<sup>105</sup>*Ibid.* Art.10. see also COP Decision X/2 Implementation of strategic plan for Biodiversity 2011-2020, including the Aichi Biodiversity Targets available <http://www.cbd.int/decision/cop/?id=12268> accessed September 26, 2014, This COP Decision recall parties to review and update their national strategic plan and request to a more effective and coherent implementation of the three objective of the Convention.

<sup>106</sup> *Ibid.* see, Art. 14

<sup>107</sup> *Ibid.*

On 3 November 2001, ITPGR was adopted by the FAO Conference at its 31st session in Rome, by Resolution 3/2001, with 116 favorable votes, no dissenting votes and two abstentions (Japan and the United States). The connection between CBD and ITPGR has its root demonstrated in the *travaux préparatoires* of both instruments.<sup>108</sup> The CBD provides comprehensive and holistic approach to its objectives, yet not exhaustively addressed each special issues such as forest, genetic resources use for the purpose of pharmaceutical and aesthetic value or others as separately. Therefore, ITPGR deals distinctively with plant genetic resources PGR for Food and Agriculture with a view to ensuring food security in harmony with CBD.<sup>109</sup>

The Treaty is a new, legally binding instrument which seeks to ensure the conservation and sustainable management of plant genetic resources for food and agriculture, as well as the fair and equitable sharing of the benefits arising from their use. At the crossroads of agriculture, commerce and the environment, the treaty also aims to promote synergy in these areas. As one commentator put it, this newly born treaty is “the latest innovation to address the intersection of international environmental, agricultural and trade law”.<sup>110</sup>

This move was partly in response to biodiversity related developments which had occurred about the same time. In particular, when the agreed text of the CBD was adopted in Nairobi in May 1992, Resolution 3 of the Final Act stated that access to *ex situ* collections not acquired in accordance with the CBD, as well as farmers' rights, were outstanding matters for which solutions should be sought within the FAO global system on plant genetic resources.<sup>111</sup> Similarly, a month later at the UN Conference on Environment and Development, Chapter 14 of Agenda 21 (“Promoting Sustainable Agriculture and Rural Development”) had called for the

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<sup>108</sup>see, Commission on Plant Genetic Resources First Extraordinary session Rome 7-11, November 1994, and Resolution 7/93 of the FAO Conference that the Director-General of FAO provide a negotiation forum for “the adaptation of the International Undertaking on Plant Genetic Resources, in harmony with the Convention on Biological Diversity”, and for “consideration of the issue of access on mutually agreed terms to plant genetic resources, including *ex situ* collections not addressed by the Convention”. and see , the preamble of ITPGR Para. 9,10, and 11.

<sup>109</sup>Ibid. see also, ITPGRFA preamble and -ART. 1 OBJECTIVES The objectives of this Treaty are the conservation and sustainable use of plant genetic resources for food and agriculture and the fair and equitable sharing of the benefits arising out of their use, in harmony with the Convention on Biological Diversity, for sustainable agriculture and food security.

<sup>110</sup>see, Law and Sustainable Development since Rio- Legal Trend in Agriculture and Natural Resources Management, <http://www.fao.org/docrep/005/Y3872E/y3872e0e.htm# P.78>. accessed September 25, 2014

<sup>111</sup> Ibid.

strengthening of the FAO system on plant genetic resources, including through steps to realize farmers' rights, as well as the "adjustment" of that system in line with the CBD.<sup>112</sup>

In 2004, ITPGR come into existence as international agreement for similar purpose to the CBD but less in its scope as it is the *Seed Treaty* only dedicated to agriculture and food. As we have seen briefly in the aforementioned paragraphs, the genesis of it was conservation of biodiversity and sustainable utilization, further it also aimed to affirming general arrangement in sharing the benefit arising from the utilization of it, for those parties giving an access to the resources. Recognizing farmers and indigenous knowledge with regard to use of resources and conservation is in harmony with the Convention on Biological Diversity. Within this framework objective, the treaty imposes several obligations on states such as conservation, exploration, collection, characterization, evaluation and documentation of genetic resources for food and agriculture<sup>113</sup>.

International Treaty on Plant Genetic Resources for Food and Agriculture, which was adopted at the Thirty-first Conference of the Food and Agriculture Organization of the United Nations on the 3<sup>rd</sup> of November, 2001, accordingly Ethiopia has signed and ratified.<sup>114</sup>

International Treaty on Plant Genetic Resources for Food and Agriculture recognize obligations which exist and are recognized in CBD, reasserted in and solidified with this treaty and it became more specific in comparison to CBD. The obligations laid down in this treaty are stricter than those under the CBD. If we look at the operative text of the treaty, it used expressly precise terms which directly impose serious of obligation which legally bind states parties to strictly comply their commitment.<sup>115</sup> "..... *Contracting Party shall ensure the conformity of its laws, regulations and procedures with its obligations as provided in this Treaty*".(emphasis added). This treaty in most of its core provisions provides for similar binding provisions upon states.<sup>116</sup> The treaty constitutes a number of obligations with respect to preservation of biodiversity in *ex*

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<sup>112</sup> Ibid.

<sup>113</sup> see, Art. 5 and 4 of the ITPGR

<sup>114</sup> see, Proclamation No. 330/2003 The proclamation to ratify International Treaty on plant Genetic Resources for Food and Agriculture, 9<sup>th</sup>Year No. 50, ADDIS ABABA-29 April, 2003 '

<sup>115</sup> see, The treaty Art. 4. General Obligation

<sup>116</sup> Ibid , Art. 4. General Obligation

Each Contracting Party shall ensure the conformity of its laws, regulations and procedures with its obligations as provided in this Treaty.

Article5.Conservation, Exploration, Collection, Characterization, Evaluation and Documentation of Genetic Resources for Food and Agriculture.

*situ* as well as *in situ*, and states are also required to cooperate with other contracting parties so as to implement the treaty.

Further, it provides for a list of obligation in article 5, and states would have to integrate as much as possible the approach to the exploration, conservation and sustainable use of plant genetic resources for food and agriculture. It listed down measures states are required to take.<sup>117</sup> The following are Ethiopia's obligations under the instrument; (1) ensuring the conformity of its laws, regulations and procedures with its obligations, integrating its policies and strategies,<sup>118</sup> (2) promoting an integrated approach to the exploration, conservation and sustainable use of plant genetic resources for food and agriculture and in particular, as appropriate developing and maintaining appropriate policy and legal measures that promote the sustainable use of plant genetic resources for food and agriculture.<sup>119</sup> (3) Facilitate access to plant genetic resources through appropriate legal means.<sup>120</sup> We will discuss these and how Ethiopia goes in the next chapter.

### **3.4. The Rotterdam Convention on Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (known as the Rotterdam Convention – adopted in 1998)**

The Growing world trade of chemicals during the 1960s and 1970s raised concerns about the risk linked to the use of hazardous chemical. These concerns eventually led to the adoption in 1987, by the UNEP Governing council of the London guidelines for the exchange of information on

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<sup>117</sup> *see*, Art. 5, a, b.. 5.1 Each Contracting Party shall, subject to national legislation, and in cooperation with other Contracting Parties where appropriate, promote an integrated approach to the exploration, conservation and sustainable use of plant genetic resources for food and agriculture and shall in particular, as appropriate:

a) Survey and inventory plant genetic resources for food and agriculture, taking into account the status and degree of variation in existing populations, including those that are of potential use and, as feasible, assess any threats to them;  
b) Promote the collection of plant genetic resources for food and agriculture and relevant associated information on those plant genetic resources that are under threat or are of potential use;  
c) Promote or support, as appropriate, farmers and local communities' efforts to manage and conserve on-farm their plant genetic resources for food and agriculture;  
d) Promote *in situ* conservation of wild crop relatives and wild plants for food production, including in protected areas, by supporting, *inter alia*, the efforts of indigenous and local communities;  
e) Cooperate to promote the development of an efficient and sustainable system of *ex situ* conservation, giving due attention to the need for adequate documentation, characterization, regeneration and evaluation, and promote the development and transfer of appropriate technologies for this purpose with a view to improving the sustainable use of plant genetic resources for food and agriculture;  
f) Monitor the maintenance of the viability, degree of variation, and the genetic integrity of collections of plant genetic resources for food and agriculture.

<sup>118</sup> *Ibid.*

<sup>119</sup> *Ibid.* Art. 5 and 6

<sup>120</sup> *Ibid.* Art. 13

chemical in international trade.<sup>121</sup> In 1998, the Prior Informed Consent (PIC) procedure was transformed to a legally binding instrument, the Rotterdam Convention it thus remained a separate international instrument which intended to address the problem of hazardous chemical.<sup>122</sup> Except for a few obligations relating to domestic production and use the convention mainly governs the import and export of chemicals.<sup>123</sup> The two main requirements of the convention are information exchange and the PIC procedure. The purpose of the former to facilitate the exchange of information between countries on chemicals moving in trade, especially those that have been banned or severely restricted to protect human health or the environment.<sup>124</sup> Countries with advance system for safe management of chemicals should share their experience with countries with less develop system. At the same time, all countries should, when taking measure to regulate chemicals, ensure that measures don't create unnecessary obstacle to international trade.<sup>125</sup>

Rotterdam Convention is a type of United Nations MEAs which is designed to protect human health and the environment. It particularly addressed issues of hazardous chemical and pesticide involves in international trade in providing a mechanism of information sharing and prior informed consent procedure as well. The convention adopted in 2002 and laid down a number of general and specific obligations to state parties to establish rules as to the decision making of international trade and internal regulatory scheme of hazardous chemical and pesticide and which should regulate the activities.<sup>126</sup> The overall objective of the convention is to regulate hazardous chemical and pesticide effect on human health or environmental risk in both developed countries and developing countries and countries of their economy in transition.<sup>127</sup>

In same situation Ethiopia is party to the hazardous chemical conventions which pose to environmental and human health risk. The Rotterdam convention is one of international

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<sup>121</sup> see, *Designing National Pesticide Legislation* by *Jessica Vapnek, Isabella Pagotto, & Margaret Kwoka* for the Development Law Service FAO Legal Office, FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS Rome, 2007 FAO Legislative study. p.18.

<sup>122</sup> Ibid. The Convention entered in to force in 2004 and applied to pesticides (art 2.a) as well as industrial chemical(art 2.b).

<sup>123</sup> Ibid.

<sup>124</sup> Ibid.

<sup>125</sup> Ibid.

<sup>126</sup> Ibid.

<sup>127</sup> using such a categories as a basis for addressing chemical impact, climate change and different environmental concern is become common in recent international arena.

multilateral agreements which contain obligations that require implementing legislations. Such as sharing information regarding the characteristics of chemical and pesticide and establishing procedural provision as to the PIC.<sup>128</sup> The Rotterdam Convention on Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (known as the Rotterdam Convention) was adopted on 10th day of September 1998.<sup>129</sup>

The convention primarily obliges state parties to designate one or more national authorities to act on its behalf in the performance of administrative functions.<sup>130</sup> States are required to facilitate information exchange about chemicals and pesticides characteristics, provide a national decision-making process on their import and export and by disseminating these decisions to Parties. And *each contracting party has adopt final regulatory action and shall notify to the secretariat* such as legislation or binding regulatory guidelines in respect to hazardous chemicals and pesticides, and therefore it require to notify that effect to the secretariat.<sup>131</sup>

As can be easily understood, that final regulatory action is an essential requirement to implement the convention. It provides a system how the chemicals regulate within the jurisdiction of the states. The Convention holds obligations on states parties to make effectively implement to mention an important: (1) set a procedure for banned or severely restricted chemical,<sup>132</sup> (2) obligation in relation to imports of chemicals listed in Annex III,<sup>133</sup> (3) information exchange,<sup>134</sup> and (4) direct measures as to implementation of the convention.<sup>135</sup> In the next chapter it will be discuss each of these obligation in detail as to how the country goes to implement.

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<sup>128</sup> see, art. 4, 10, 14, and 15 of the Convention.

<sup>129</sup> see, Proclamation No. 278/2002 Rotterdam Convention Ratification Proclamation 8<sup>th</sup> Year No. 25 ADDIS ABABA July, 2002

<sup>130</sup> see, Art. 4 of Rotterdam convention Article 4

1. Each Party shall designate one or more national authorities that shall be authorized to act on its behalf in the performance of the administrative functions required by this Convention.

2. Each Party shall seek to ensure that such authority or authorities have sufficient resources to perform their tasks effectively.

3. Each Party shall, no later than the date of the entry into force of this Convention for it, notify the name and address of such authority or authorities to the Secretariat. It shall forthwith notify the Secretariat of any changes in the name and address of such authority or authorities.

4. The Secretariat shall forthwith inform the Parties of the notifications it receives under paragraph 3.

<sup>131</sup> see, Art. 2(e) Final regulatory action" means an action taken by a Party, that does not require subsequent regulatory action by that Party, the purpose of which is to ban or severely restrict a chemical;

<sup>132</sup> Ibid. Art. 5.

<sup>133</sup> Ibid. Art. 10.

<sup>134</sup> Ibid. Art. 14.

<sup>135</sup> Ibid. Art. 15.

## CHAPTER FOUR

### 4. Policy and Legal Framework for the Implementation of Environmental Law

#### Introduction

Before I look into specific area of the research, it is necessary to remind only the general remark of policy and legal framework of environmental law in Ethiopia. As it provided in the constitution Articles 44 and 92, it sets a constitutional standards for the rest of environmental objective. Since the promulgation of the Constitution, Ethiopia adopted Environmental Policy Ethiopia (EPE).<sup>136</sup> It is found that, environmental protection in the National Policy and Strategy as a key prerequisite for lasting success.<sup>137</sup>

The overall policy goal of environmental policy of Ethiopia is "to improve and enhance the health and quality of life of all Ethiopians and to promote sustainable social and economic development through sound management and use of natural, human-made and cultural resources and the environment as a whole so as to meet the needs of the present generation without compromising the ability of future generations to meet their own needs".<sup>138</sup> The notion of this policy statement holds the original definition of sustainable development and which aims at the sustainable use of natural resources of the nation and the protection of the environment on which to ensure social and economic development of the peoples'. The core points in the EPE are the reflection of constitutional rights and objectives. It is true that Ethiopia environmental policy has been heavily influenced by international norms, particularly by the principle of sustainable development.<sup>139</sup> Several environmental laws were enacted and implemented. Besides the enactment of laws, administrative system required for the achievements' of the protection of environment were also established. Subsequently, other environmental laws followed including Water Resource Management, Environmental Impact Assessment Proclamation as well as Environmental Protection organ Establishment.<sup>140</sup>

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<sup>136</sup> see, ENVIRONMENTAL POLICY OF ETHIOPIA(EPE) adopted by the council of minister (1997) Addis Ababa Ethiopia.

<sup>137</sup> Ibid.

<sup>138</sup> see The policy document section II. THE POLICY GOAL, OBJECTIVES AND GUIDING PRINCIPLES

<sup>139</sup> *Supra* note 11, Jams Kruger ,et al 1. p. 76

<sup>140</sup> Ibid. p. 75- 77

The Growth and Transformation Plan(GTP) provides a strategic direction for this decade in environment and climate change issues.<sup>141</sup> The government of Ethiopia has recently introduced the Climate-Resilient Green Economy (CRGE) to protect the environment from adverse effects of climate change and to build a green economy that will enable it to realize its ambition of reaching middle income state by 2025.<sup>142</sup> In addition to the supremacy clause of the Constitution, the EPE and environmental laws are also impliedly acknowledged international norms and might be consider as an entry point in support of IEL implementation. Moreover, the establishment of institution, adoption of different laws of environment and related strategic documents has played significance role so as to comply with IEL.

#### **4. 1. Policy and Legal Framework**

##### **A. Biodiversity**

Biodiversity is a tremendous source for the community in support of their agriculture economy and other aspects of life, such as utilizing it for construction material, medicine etc. The section on biodiversity in EPE promotes *in situ* systems (i.e. conservation in a nature reserve, farmer's fields, etc.) as the primary target for conserving both wild and domesticated biological diversity; it also promotes *ex situ* systems (i.e. conservation outside the original or natural habitat) in gene banks, farms, botanical gardens, ranches and zoos. Further, Ethiopia has a national policy on biodiversity and research which was adopted in April 1998.<sup>143</sup> The objectives of this policy is to ensure that genetic resources and ecosystems as a whole are conserved, developed, managed and sustainably utilized.<sup>144</sup> Biodiversity conservation and development programmes should be duly integrated into the country's agricultural, health, industrial and overall national economic development strategies and plans.<sup>145</sup> Promoting regional and international cooperation in biodiversity conservation, development and sustainable use is also another policy goal.<sup>146</sup> Moreover, the policy of biological diversity conservation and research has highlighted the area Ethiopia has establish the system on biological diversity conservation and access to the genetic

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<sup>141</sup> *see*, Growth and Transformation Plan of 2011-2015 Vol. I Main document, Ministry of Finance and Economic Development, November 2011 Addis Ababa at. 148

<sup>142</sup> *see*, ETHIOPIA,S CLIMATE RESILIANCE GREEN ECONOMY STRATEGY, FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA Addis Ababa, September 2011.

<sup>143</sup> *see*, National Policy on Biodiversity Conservation and Research, April 1998. P. 6-7.

<sup>144</sup> *Ibid.*

<sup>145</sup> *Ibid.*

<sup>146</sup> *Ibid.*

resources of research, giving an access for research and innovation.<sup>147</sup> Ethiopia takes series of measures, such as adopt a national biodiversity and strategic action plan.<sup>148</sup> Re-establish Institute of Biological Diversity and Research institution (Institute of Biodiversity Conservation and Research Establishment Proclamation No. 120/1998 (later renamed the Institute of Biodiversity Conservation and Research by Proclamation No 381/2004)); and establish wildlife protection authority. In regard to legislation the country enacted different law such as ABS, Biosafety law, Environmental Impact Assessment, Forest development and conservation and utilization law, Development, conservation and utilization of wildlife proclamation, and regulation.<sup>149</sup>

The Ethiopian farming communities, which constitute about 85 percent of the population, highly depend on biodiversity to meet their basic needs such as food, shelter, fuel, medicine and transportation. for example more that 80 percent of Ethiopians get their healthcare service from traditional healer who completely rely on biodiversity and more than 95 percent of traditional medicine of is plant origin.<sup>150</sup> The current Ethiopia Biodiversity Strategic Action Plan (EBSAP) interlinked issues comprising biodiversity protection and management for food security (poverty reduction), health and livelihood improvement of Ethiopian population especially the rural communities (farmer and pastoralists) whose survival depends on the use of natural resources.<sup>151</sup> The government side of initiation to build a green economy which resilience climate change is shows a tendency towards the achievements of policy objectives.

## **B. Hazardous Chemicals**

The objective of this specific policy section is to adhere to the precautionary principle of minimizing and where possible preventing discharges of substances, that could be harmful, and to disallow the discharge when they are likely to be hazardous;. to adopt the "polluter pays"

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<sup>147</sup>see, Fikremarkos Merso & Imiru Tamrat, Some Thought on The Benefits and Cost of The Regulatory Framework on Access to Genetic Resources and Benefit Sharing in Ethiopia, Journal of Ethiopian Law. Vol XXIV. No 1. July, 2010. p.131

<sup>148</sup>see, National Biodiversity Strategic Action Plan, Institute of Biodiversity Conservation, December 2005 Addis Ababa Ethiopia.

<sup>149</sup>see, For example Environmental Impact Assessment Proclamation (EIA) No 299/2002, Access to Genetic Resources and Community Knowledge and Community Right proclamation No 482/2006, Forest Development Conservation and Utilization Proclamation No 542/2007, Development Conservation and Utilization of Wildlife Proclamation No. 541/2007, The Biosafety Proclamation No 655/2009, The brief discussion and evaluation of these legislation will come be in the subsequent sub section.

<sup>150</sup>supra note 147.

<sup>151</sup>see, Ethiopia Biodiversity Strategic Action Plan(EBSAP), Executive summery

principle which states the one who pollutes the environment should take the burden of cleaning or redressing the damage.<sup>152</sup>

By the means that provide an adequate regulation of agricultural (crop and livestock) chemicals and micro-organisms; and to maintain an up-to-date register of toxic, hazardous and radioactive substances, and to make the information available on request.<sup>153</sup>

As it is discussed in chapter three section 3.4 with regard to Rotterdam convention, Ministry of Environment and Forestry in cooperation with appropriate federal and regional organs responsible as to implementation of the convention.<sup>154</sup> EPE adhere to the precautionary principle, and adopt the "polluter pays" principle with regard to hazardous material.<sup>155</sup> Indeed, there are pollution protection and solid waste management proclamations which crystallized the principles and govern the area. Nonetheless, MEF can't formulate a detail and specific policy with regard to hazardous chemical regulation and management. Until that come to appear the general policy of environment continuing its application. In this regard, Intergovernmental environmental organization suggests that integrated chemical management approach is an appropriate policy option.<sup>156</sup> It required a specific policy and legal framework in consultation with private sector.<sup>157</sup>

#### **4. 2. Institutional Framework and Responsibilities**

The concern of implementation of international environmental law may be fall on to those of three branches of the government however; immediate responsibilities will rely on the executive

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<sup>152</sup> see, EPE, section 3.8. Control of Hazardous Materials and Pollution From Industrial Waste

<sup>153</sup> Ibid

<sup>154</sup> see, Proclamation N0.629/2009 The Rotterdam Convention on the prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade. Ratification proclamation, 8<sup>th</sup> Year, No. 25, see also EPE, section, 3.8. see also, Environmental Pollution Control Proclamation No. 300/2002, Federal Negarit Gazeta 9<sup>th</sup>Year No. 12, The pollution protection proclamation has also the concept in its Article 16 the fundamental principles of environmental law 'Polluter pay principle' and the 'principle of preventive action' in its Article 3 (4) and (5) respectively

<sup>155</sup> Ibid.

<sup>156</sup> see, Strategic Approach to International Chemical Management, Comprising the Dubai Declaration on International Chemicals Management, the Overarching Policy Strategy and the Global Plan of Action Resolutions of the International Conference, available [www.UNEP.org/SAICAM\\_publication\\_ENG/pdf](http://www.UNEP.org/SAICAM_publication_ENG/pdf), accessed November 12, 2014.

<sup>157</sup> see, Belay Tizazu, The Role of Private Sectors For Safe Pesticides Distribution and Use in Ethiopia: Private Environmental Governance Perspective. Paper presented in stakeholder discussion held in September 30, 2014 and Interview with Hiwot lema , Director at Ministry of Agriculture. Pesticides are smuggled on the basis of contraband trade from Kenya and Sudan, that could happened as a result of privet sectors gaps in relation to addressing all the demand and lack of regulatory framework.

branch. Presumably, the Ministry of Environment and Forest is the primary one and also other institutions those are by their very nature auxiliary to environmental matter expected to have an intrinsic responsibilities regarding implementation.<sup>158</sup> The measures of implementation with regard to MEAs are provided below, but generally speaking, it could be taking appropriate measures within the states competence to ensure the compliance, which are usually depending on the treaties. In most of the cases treaties are requires parties to provide specifically the enforcement by their laws and regulation.

#### **A. MINISTRY OF ENVIRONMENT AND FOREST**

The Ministry of Environment and Forestry (MEF) is a leading national environmental protection authority. According to the original mandate, it has a number of responsibilities and functions in cooperation with other sectorial institution.<sup>159</sup> MEF is responsible, for example, to coordinate measures to ensure that the environmental objectives provided under the Constitution and the basic principles set out in the environmental Policy of Ethiopia are observed to evaluate environmental impact assessment reports of federal and inter-regional projects, as well as audit and regulate similar environmental activities.<sup>160</sup>

In relation to MEAs the MEF has powers and responsibilities to take part in negotiations of international environmental agreements and, as appropriate, initiate a process of their ratification and formulate and initiate and coordinate the formulation of policies, strategies laws and programs to implement international environmental agreements to which Ethiopia is a party; and upon approval, ensure their implementation.<sup>161</sup> The law provides powers and duties to the ministry as illustrated above, accordingly, it has an important role particularly in coordinating

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<sup>158</sup> *Supra* note 94, ITPGR Article 6.

<sup>159</sup> *see*, for example United Nations Convention to Combat Desertification in those Countries experiencing Serious drought and-or Desertification, particularly in Africa Ratification Proclamation No 81/1997 Article 3 provide that Power of the Environmental Protection Authority "*The Environmental Protection Authority is hereby empowered to implement the Convention in cooperation with the concerned federal and regional government organs, nongovernmental organizations as well as with communities.*" Biosafety proclamation No 655/2009 Article 2(10),(11)and(12), Cartagena Protocol on Biosafety Ratification Proclamation No. 362/2003 Article 3, which is clearly stated that the responsibility of Environmental protection Authority "*The Environmental Protection Authority is hereby authorized to take, in cooperation with the appropriate Federal, Regional and city government organs, actions necessary to implement the Protocol.*"

<sup>160</sup> *see*, Article 6(4)&(5) of proclamation 295/2002

<sup>161</sup> *Supra* note 24 and 25, Art. Art. 6, and Art. 4 of Proclamation No 803/2013 a proclamation to provide power and duty of executive organ of federal government amendment, The ministry is in most of environmental agreements act as a secretariat or designated national authority, *see also*, Rotterdam Convention ratification proclamation Art. 3 and The Convention Art. 4.

and follow up on measures of implementation programs or projects those undertaken by other agencies and it.<sup>162</sup>

## B. INSTITUTE OF BIODIVERSITY CONSERVATION

Institute of Biodiversity Conservation (IBC)<sup>163</sup> is one of semi-autonomous institution authorized to implement the Convention of Biological Diversity, and International Treaty of Plant and Genetic Resources for Food and Agriculture and the Nagoya protocol to the CBD, however, Cartagena protocol is allocated to MEF.<sup>164</sup> Article 3 of the *Seed treaty* ratification proclamation provide for the Power of the Institute of Biodiversity Conservation and Research, is to undertake all acts necessary for the implementation of the treaty. It would be meant that to take appropriate measures in order to implement the treaty. For example, enact the law, initiate and implement programs which deal about the preservation and protection of seed. Add to these, the institute has also empowered to take, in collaboration with the appropriate federal, regional and city administration government organs, all acts necessary for the implementation of the Nagoya Protocol and the *seed treaty*.<sup>165</sup>

Biodiversity sector institutional arrangement is quite clear. However, there seems to exist sort of inconsistency in connection with implementation of Cartagena Protocol through MEF. By its very nature that was originally given to the IBC, it has a responsibility to implement CBD. Indeed, Cartagena protocol also came out for the implementation of CBD, the objective of the protocol is as follows.... *handling and use of living modified organisms resulting from modern biotechnology that may have adverse effects on the conservation and sustainable use of*

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<sup>162</sup> Ibid.

<sup>163</sup> see, Institute of Biodiversity Conservation and Research Establishment Proclamation No. 120/1998 later renamed the Institute of Biodiversity Conservation by Proclamation No 381/2004.

<sup>164</sup> see, Biodiversity Convention ratification proclamation No 98/1994 Addis Ababa 31May, Proclamation No. 330/2003 The International Treaty on plant Genetic Resources for Food and Agriculture Ratification Proclamation 9thYear No. 50, and see also PROLAMATION NO 753/2012 Nagoya protocol on access to genetic resources and benefit sharing arising from their utilization Ratification Proclamation(18th year No. 46 Addis Ababa 27th July 2012), and see, Cartagena Protocol on Biosafety Ratification Proclamation No. 362/2003". Article 3, The Environmental Protection Authority is hereby authorized to take, **in cooperation with the appropriate Federal, Regional and city government organs**, actions necessary to implement the Protocol.(emphasis added),

<sup>165</sup> see, Article 3 of both ratification Proclamation No. 330/2003 The International Treaty on plant Genetic Resources for Food and Agriculture Ratification Proclamation 9thYear No. 50, and see also PROLAMATION NO 753/2012 Nagoya protocol on access to genetic resources and benefit sharing arising from their utilization Ratification Proclamation "*The Institute of Biodiversity Conservation and Research is hereby empowered to undertake all acts necessary for the implementation of the treaty.*"

*biological diversity, taking also into account risks to human health, and specifically focusing on transboundary movements.*<sup>166</sup>(Emphasis added)

First, IBCR has responsible to implement the CBD by taking all necessary measures to the effect of CBD. Second, it is also entrusted to take another treaty (the *seed treaty*) which has a synergy with CBD and they are much interwoven.<sup>167</sup> Third, The IBC has various powers and duties relevant to *Biosecurity* and in particular, its environmental aspects.<sup>168</sup> We can figure out a clear picture as to the consistent extension of powers and mandates. Having said these Cartagena protocol came up with to address one issue of the convention which is biosafety. It is presumed that the IBC would be a quintessential institution to take the responsibilities, let alone other reasons listed, by the mere fact that the protocol emanates from the convention.

Alternatively, if the matter falls on more than one institutional mandate, it is better to expressly allocate the responsibility for both concurrently and required them to work in coordination as appropriate, either through memorandum of understanding or legislative instrument. While preparing national plans and programmes for implementation of multilateral environmental agreements, agencies can coordinate and integrate their roles through information and communication networks, technical skills and scientific facilities.

### **C. MINISTRY OF AGRICULTURE**

Natural Resources and conservation sub-sector constitute a quarter in the entire sector in the institutional structure Ministry of Agriculture and it has a function in relation to natural resource conservation *vis-a-vis* agricultural practice which mean it has certain extent in connection with biodiversity conservation and regulating seed and grant Plant breeding rights, regulating hazardous chemicals in connection with agricultural practice. Some parts of power and function

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<sup>166</sup> *see*, Article 1 of the protocol, CARTAGENA PROTOCOL ON BIOSAFETY TO THE CONVENTION ON BIOLOGICAL DIVERSITY. Adopted on the 29th January, 2000;

<sup>167</sup> *see*, chapter three discussion section 3.3 first two Para.(this and other citation will be rearranged while I finalize the entire work)

<sup>168</sup> *see*, Institute of Biodiversity Conservation and Research Establishment (Amendment) Proclamation No. 381/2004. Article 6, Power and Duties cooperating with the concerned federal and regional authorities with respect to protection of biodiversity; encouraging and supporting public participation in the conservation, development and use of biological resources; and developing regional and international cooperation on biodiversity conservation and research activities, based on international agreements and national legislation.

of the ministry was partially transferred to the MEF.<sup>169</sup> Hence, there might be three institution engaging in the common issues, first we have MEF, second, IBC(preservation and conservation of biodiversity and at the same time the institute is accountable to the MoA) and third, MoA (natural resources development sector is still the work of MOA; the preservation and conservation of natural resources: such as forest, soil and land administration it is given to it by Proclamation No 691/2010 Art. 18(1) (e) ). There seems to be blurred arrangement in these three respective executive bodies in a federal government. It would be too difficult to dispose if there ever existed unsettled allegation.

Such a problem also retains in Pesticide Registration and Control Proclamation in 2010 which seems to enclose the implementation of three conventions in one act. On the one hand, the ratification proclamation allocates a power to the MEF to implement the instruments.<sup>170</sup> On the other hand, the proclamation linked with the Ministry of Agriculture in regard to implement three of chemical conventions to control on the import and export of substances in relation to trade and other aspects.<sup>171</sup> Further, Pesticide Registration and Control Team to which is organized under the MoA to register the product import from abroad and control all the activities which means implementing Rotterdam convention.<sup>172</sup>

The role of MEF and MoA might seem overlapping. MEF has only a monitoring in implementing the convention. Whereas, MoA has a regulatory role since it has a direct and inherent responsibilities dealing with chemical applied to agricultural practices. Thus, monitoring

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<sup>169</sup> *see*, proclamation no 803/2013 A Proclamation on Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia (Amendment) Article 4(2), *see also* Forest Development Conservation and Utilization Proclamation No 542/2007 of Art. 11

<sup>170</sup> *see*, The Rotterdam Convention on the Prior Informed Consent procedure for certain Hazardous Chemical in international Trade Ratification Proclamation No 278/2002 Article 3.

<sup>171</sup> *see*, Basel Convention on the Control of the Transboundary movement of Hazardous Wastes and Their Disposal Ratification Proclamation No192/2000 Article 3, The Basel Convention Amendment Ratification Proclamation No 356/2003 Article 3, The Basel Protocol Ratification Proclamation No 357/2003 Article 3, The Stockholm Convention on the Persistent Organic Pollutant Ratification Proclamation No 279/2002 Article 3 and The Rotterdam Convention on the Prior Informed Consent procedure for certain Hazardous Chemical in international Trade Ratification Proclamation No 278/2002 Article 3, though the ratification proclamations of these chemical conventions endorsed to the EFM, however it is an inherent responsibility of MoA and for this reason it enacted an implementation legislation that govern the issues. *see also* Proclamation for the Registration of pesticide No 674/2010, the proclamation define the conventions and used their annex and different provisions as a guide line and directives to the implementation of the MEA. Interview with Alemahetu Woldamanuel Pesticide Risk Reduction project coordinator at the MoA Addis Ababa (September 30, 2014)

<sup>172</sup> An interview with w/o Saba Abebe Senior pesticide registration and plant protection expert at MoA, MoA(November 4, 2014) She mentioned that their practice and guideline is adopted from international accepted practice.

compliance and regulating the activities of one matter that is allocated to different institutions is the job of MEF.<sup>173</sup>

Further, indirectly the ministry shouldered in regard to implementation of the conventions. Defining the Conventions in the pesticide control and registration proclamation is on a ground of assuming that the standards, procedures and annexes in the conventions are internationally accepted practices and hence used as a directive or guideline within the regulatory framework.<sup>174</sup> The problem of implementation procedure with regard to the convention, if the convention and annex serve as a directive or guide line for activities under MOA activities, first the MoA does not make to a promise to enact subsidiary legislation under Art 34(2). Second, it must be translated and published just as any other federal law.<sup>175</sup> Overall, despite the fact that it is better to provide clear and precise roles and mandates for each of the respective agencies.

#### **4. 3. Type and Nature of implementation measures**

National implementation of IEL may be divided into three separate and yet clearly related and overlapping, parts: legislative, administrative and judicial implementation.<sup>176</sup> The measures are categorized in three; providing a legislation on each of the theme which the treaty would like to address, or provide an administrative measures which might be related to legislative since an administrative measures must be supported by procedural rules, and lastly, it might be also judicial measures.

Substantive obligations may require actions in the forms of legislative and policy measures by central governments.<sup>177</sup> A comprehensive approach to MEA implementation encompasses not only legislative action, but also executive action, judicial decisions, civil society involvement and business sector engagement.<sup>178</sup> Beyond the sphere of action of the three arms of government, the involvement of interested individuals, grassroots community groups and high level

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<sup>173</sup>Interview with Alemayhu Woldamanuel Pesticide Risk Reduction project coordinator at the Ministry of Agriculture Addis Ababa (September 30, 2014).

<sup>174</sup> Ibid.

<sup>175</sup> see, Federal Negarit Gazeta Establishment proclamation No 3/1987

<sup>176</sup>see, CATHRINE REDGWELL, NATIONAL IMPLEMENTATION, Oxford Handbook of INTERNATIONAL ENVIRONMENTAL LAW, Oxford University press,(first edition 2007) P.929

<sup>177</sup>see, Gregory L Rose National and Global Environmental Laws: Dichotomy and Interlinkages Examined Through the Implementation of Multilateral Environmental Agreement, First preparatory meeting of world congress on justice, governance and law for environmental sustainability, 12-13 October 2011, Kuala Lumpur, Malaysia p. 7

<sup>178</sup> Ibid, p. 8, unfortunately, civil society and business sector activity in relation to environmental concern is very insignificant in our country and so I hope it will be better soon by promoting their participation and awareness.

environmental organizations, that is, civil society involvement can be essential to effective MEA implementation.<sup>179</sup> This form of implementation is promoted primarily through forms of information exchange, such as consultations in planning processes, receiving objections concerning proposals, complaints concerning governmental performance, or intelligence concerning environmental breaches.<sup>180</sup> It is important to note that all measures are interrelated since each of the measures can't be executed independently or can't be effective or legitimate without referring one another. Therefore, Ethiopia needs to take and promote these measures as mutually supportive to serve one purpose, implementation of IELs.

### **A. Legislative Implementation**

Article 6 of CBD requires state to 'develop.....or adopt for this purpose' existing national strategies plans or programmes, suggesting that at least a degree of legislative implementation will be required to fulfill these CBD obligations.<sup>181</sup> It is better to undertake both *in situ* and *ex situ* conservation obligations of Article 8, such as the requirement to establish a system of protected areas.<sup>182</sup> In such situation, it is an important step to enact a legislation for the Convention's objectives. In this regard, Access to Genetic Resources and Community Knowledge and Community Right proclamation No 482/2006 (ABS law) is one which, among other things aims to fulfill the Convention's obligation specifically on access rules to Genetic Resources and the benefit sharing scheme. There is also subsidiary legislation in this regard, Access to Genetic Resources and Community Knowledge and Community Right Council of Minister Regulation No 169/2009 which further provide detailed rules as to how to precede access and similar matters.

EIA Proclamation, the Biosafety Proclamation No 655/2009, Forest Development Conservation and Utilization Proclamation No 542/2007,(Forest proclamation), Development Conservation

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<sup>179</sup> Ibid.

<sup>180</sup> Ibid.

<sup>181</sup> see, Article 6, 7 and 8 of the CBD

<sup>182</sup> Ibid. see also the south African experience, No. 10 of 2004: National Environmental Management: Biodiversity Act, 2004. This law address many aspects of biodiversity concern; To provide for the management and conservation of South Africa's biodiversity within the framework of the National Environmental Management Act 1998; the protection of species and ecosystems that warrant national protection; the sustainable use of indigenous biological resources; fair and equitable sharing of benefits arising from bioprospecting involving indigenous biological resources; the establishment and functions of a South African National Biodiversity Institute; and for matters connected therewith. and see also Act No 18 of 2003 of the Biodiversity act of India.

and Utilization of Wildlife Proclamation No. 541/2007(Wildlife proclamation) are the major environmental laws in the area of biodiversity. Now let's see each one of them to examine whether they have recognized the obligation under the agreements.<sup>183</sup> In general, we have major laws enacted in relation to environment, particularly having a nexus to biodiversity directly and indirectly. The first law that comes to forefront in connection with Biodiversity is ABS law, which contains five parts and 38 Articles.

One of the justification to enact this law is the CBD requires the enactment of access legislation.<sup>184</sup> This law reaffirms the sovereign right of states in GRs, has an objective to design to regulate access, and ensure the benefit from utilization of GRs. It provides administrative provisions so as to authorize the institute to administer and monitor access conditions, and also attempts to impose responsibilities for different parties. However, many of the provisions are unclear and didn't indicate what the legal consequences would be, if the parties fail to do so. Not only the administration provision but also, the substantive provisions are poorly drafted in many aspects. For example, consider community right as an absolute right, there is no exception in emergency situation.

One of the problematic article in regard to ABS law is article 7, which provides for community's right to regulate access, and sub article 1(b) of Art. 7 stipulates that "*when exercising the right to give prior informed consent, the right to refuse consent when they believe that the intended....*". First, the title of the this is not correct, and it must be provide that community has an '*authority*' or '*power*' to regulate access not a '*right*', since it is an enabling provision and it must be crafted in a '*May*', that enables or authorizes the party. Secondly, while they refuse their consent the basis of refusal must not be in a '*believe*', rather, it would have to be based on some sort of justification of *prima facie* risk assessment beyond believe or superstition.<sup>185</sup> The other concern of this defective law is the right to share a benefit that generate from the utilization of genetic resources. This right is recognized and protected in many jurisdictions, it provided in article 9; it allocates the amount 50 percent of the benefit shared by the states in the form of money from the

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<sup>183</sup> *Supra note*,93, 94 and 95.

<sup>184</sup> *see*, CBD Article 15, The preamble of ABS law Para three, "*.....Ethiopia is party to the Convention on Biological diversity and the Convention requires enactment of legislation*"

<sup>185</sup> I doubt that local community decision making process and reach in a conclusion on this issue might not be based on scientific inferences rather they may decide on otherwise, yet I don't mean that local community has no indigenous knowledge.

benefit.... This is a legitimate benefit of the community guaranteed in the law in different articles, however, the preceding sub article automatically altered it in to a form of '*common advantage*' in article 9(3), and this may create difficulties in securing their benefit and narrow the extent of their right. Therefore, substantive provisions are not appropriately worded.

This researcher argue that Ethiopia can draw a lesson from South African approach and the incumbent ABS law must not be limited to regulate to access instead it will be amended in order to comprehensively address all matters in relation to biodiversity and it must be detailed and take in to account specific conditions of the country. Alternatively, Ethiopia would require enacting additional legislation in which enables us to address the issues of biodiversity, particularly conservation and sustainable utilization of its components such *in situ* and *ex situ* conservation, research, and training etc. The second obligation and measure that Ethiopia is supposed to fulfill and undertake under the CBD is introduce appropriate procedure requiring environmental impact assessment, and allow for public participation in such procedures,<sup>186</sup> it is one of its earliest commitments to undertake EIA.<sup>187</sup>

EIA proclamation conceives of EIA procedure as multifunctional.<sup>188</sup> It stated in the preamble that an effective means of harmonizing and integrating environmental, economic, social considerations in to a decision making process in a manner that promotes sustainable development. Therefore, if the motive and objectives are mentioned above it was a *bona fide* regulation regardless of CBD requirement rather to facilitate sustainable development, fosters the implementation of the right to clean and healthy environment, brings about administrative transparency and accountability, and enables the public to participate in the planning of and decision taken on developments which may affect them and the environment. In its text, the Proclamation provides for a number of important stipulations pertaining to EIA.<sup>189</sup>

The EIA proclamation giving a notice to individual and institution that initiate project necessarily to conduct EIA that impose an obligation to conduct EIA. The law designed to

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<sup>186</sup> see, Article 14 " Introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects and, where appropriate, allow for public participation in such procedures;"

<sup>187</sup> *Supra* note 14, Dejene Girma (PhD) p.26

<sup>188</sup> *Ibid*, p. 28

<sup>189</sup> *Ibid*

regulate the activities that are undertaken within the country and authorized the MEF and the regional agencies to evaluate the report. It contains general provision in terms of administration and procedural rule, including penal sanction that may enforce in conjunction with the criminal code of the country.<sup>190</sup> The law intends to govern on public instruments (policy, programme strategies and project) to determine whether there will exist adverse significant impact for permitting otherwise inappropriate development falling out with the terms of overarching standard.<sup>191</sup>

The proclamation in Art. 5(1) refers the directives, to list category of project that must be subject to EIA. The proclamation also incorporate basic principle of international environmental law, such as sustainable development and precautionary principle.

Sustainable development is located in the preamble of the EIA proclamation and it says;

*" assessment of possible impacts on the environment prior to the approval of a public instrument provides an effective means of harmonizing and integrating environmental, economic, cultural and social considerations into a decision making process in a manner that promotes sustainable development"*<sup>192</sup>

The point of sustainable development put in the preamble of this proclamation seems that the law maker wants to EIA as principle consider bearing in mind during the detail undertaking of assessment. While the projects might have an adverse impact on the environment, it is strongly necessary to take into account sustainability of the project or program. Whereas, the second principle found in the EIA proclamation is precautionary principle<sup>193</sup>, it explicitly provide under Article 4, it reads as follow;

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<sup>190</sup> see article 18 of EIA proclamation.

<sup>191</sup> see, EIA proclamation preamble.

<sup>192</sup> Ibid, Art. 5

<sup>193</sup> Ibid. and in addition to the above discussion, the principle in support of the controversial contention that the "precautionary principle" by 2001 had attained the status of binding customary international law, and concluded that in "the context of the precautionary principle's . see also Prof. Phillip M. Saunders, Q.C. INTERNATIONAL ENVIRONMENTAL LAW IN CANADIAN COURTS, he further solidify the argument, stating that, *Environmental Defence Canada v. Canada (Minister of Fisheries and Oceans)*, a judicial review application dealing with a Minister's decisions under *SARA*, Campbell, J. turned to Canada's obligations under the *Biodiversity Convention* for guidance. He found that section 38 requires the Minister, in preparing recovery strategies or action plans, to consider Canada's "commitment" to "the principle that, if there are threats of serious or irreversible damage to the listed wildlife species, cost-effective measures to prevent the reduction or loss of the species should not be postponed for a lack of full scientific certainty ...". In determining that this was a "mandatory interpretive principle" to be applied by the Minister, Campbell, J. took account of the fact that Canada had ratified the Convention and was therefore "committed to apply its principles. p. 7

### *Considerations to Determine Impact*

- 1) The impact of a project shall be assessed on the basis of the size, location, nature, cumulative effect with other concurrent impacts or phenomena, transregional effect, duration, reversibility or irreversibility or other related effects of the project.*
- 2) The Authority or the relevant regional environmental agency shall err on the side of caution while determining the negative impact of a project having both beneficial and detrimental effects, but which, on balance, is only slightly or arguably beneficial, and thus determine that it is likely to entail a negative significant impact.<sup>194</sup>*

It is clear that to understand the precautionary principle which is incorporated in this provision, uncertainty is the primary focus. Ethiopia's approach seems adopting the first version of the principle which provides uncertainty does not justify inaction; therefore, in case of uncertainty the law presumes as if the impact is irreversible and determines that an action is likely to entail a negative significant impact. In this regard, the legislative measure of Ethiopia takes is consistent with the international principle despite the fact that EIA proclamation is not intend to address CBD obligation. Indeed, the public participation requirement conception in the CBD is not as such strictly mandatory rather it says 'where appropriate allow public participation' in the EIA procedure.<sup>195</sup>

Regarding ITPGR Ethiopia has an obligations under the instrument; ensuring the conformity of its laws, regulations and procedures with its obligations, integrating its policies and strategies.<sup>196</sup> It is clear that the inter alia, measure that Ethiopian would have to take is a legislative. If we need to ensure the law, regulation and procedures being in accordance with the obligations, it is necessary to enact new legislation, amend the existing and establish equivalent rules and procedure. When we look for such a measure in Ethiopia, the country has enacted only one regulation, Access to Genetic Resources and Community Knowledge and Community Right Council of Minister Regulation No 169/2009 which was an implementation regulation for ABS proclamation. This regulation tries to provide detailed conditions and procedure for access to

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<sup>194</sup> *see*, the EIA proclamation article 4

<sup>195</sup> *Supra* note 187, p. 60-62, I also strongly share the analysis and I have much doubt as to the practicality of public participation in our country setup.

<sup>196</sup> *Supra* note 94 Article 4 of the ITPGR

GRs and further it attached different annexes of forms of commercial access application, non-commercial access application, and access application under the multilateral system. This regulation is a pattern of the proclamation which provides to implement in detail ABS proclamation based on article 37 of the proclamation to the proper implementation of the proclamation, and primarily it was intended to secure fair and equitable sharing of benefit.

Therefore, even though the regulation defines the ITPGR and it refers to in a provision the multilateral system it is not amount to sufficiently addressing the obligation. Obtaining a fair and equitable sharing of benefit out of GRs utilization is a legitimate interest that can be pursued and it must be supported by legal framework. In this respect Ethiopia measure would be consider as a good beginning. The need to a reform on the legal framework is not only for ensuring the benefit sharing scheme but also, the proclamation would suppose to harmonizing with ITPGR and the Nagoya protocol on ABS.<sup>197</sup> In this point, new issues are introduced such as transnational cooperation.<sup>198</sup> Indeed, there is an initiation to update the law with a view to harmonizing it with the new development and in order to address issues which was not covered before(e.g.; defining terms GRs utilization), regarding import and export of GRs, and reconsidering the involvement of Ministry of Trade and Investment agency.<sup>199</sup>

The first two objective of the treaty equally needs a focus and measures and further when doing these the policy and strategies are also expected to be integrated with other sectors.<sup>200</sup>

Effective regulation on access to GRs may contribute to poverty reduction by creating the basis for leveraging capacity building and transfer of technology through collaborative research such as by allowing access to new plant varieties with important qualities to improve the productivity of agriculture thereby improving the livelihood of poor farmers. Capturing non-monetary

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<sup>197</sup>see, Nagoya Protocol On Access to Genetic Resources and Benefit Sharing , which is the recent development emerged in 2012 and Ratified by proclamation No 753/2012

<sup>198</sup> see Article 11 of the Nagoya Protocol and Interview with Fikremariam Gion ABS directorate legal expert at IBC in Addis Ababa (November 24, 2014)

<sup>199</sup>Interview with Fikremariam Gion ABS directorate legal expert at IBC Addis Ababa, In general, we believe that these institutions has an interest on the issue because both trade and investment are involved in dealing with the ABS regulation.

<sup>200</sup>see, article 5 & 6 ITPGR. Promoting an integrated approach to the exploration, conservation and sustainable use of plant genetic resources for food and agriculture and in particular, as appropriate developing and maintaining appropriate policy and legal measures that promote the sustainable use of plant genetic resources for food and agriculture.

benefits may actually be more easily negotiated for securing monetary benefits which might not be of much significance in most cases. In fact, developing countries capacity's to build its own scientific infrastructure and research capacity through collaborative research using its GRs as a bargaining chip would ultimately ensure the acquisition of more significant benefits from access to the nation's GRS by adding value of the resources.<sup>201</sup> The law should be intended both to regulate and facilitate access and should not prohibitively be restrictive. Excessive regulation may increase transaction costs and discourage use of GRs. Clear and well throughout policy objectives that articulate priorities, strategies and required incentives on access to GRs could help in addressing the country's need to boost its national capacity in research and innovation of its rich GRs and greatly contribute to poverty alleviation and food security objectives.<sup>202</sup> In relation to facilitating access to plant genetic resources through appropriate legal means, as mentioned above the existing law is not comprehensive however, currently ICB have projected a reform(amendment)proposal have been initiated.<sup>203</sup> The suggestion seems to be motivated by concerns with practical problem during implementation and its impact on the overall regulatory regime.

The Biosafety law <sup>204</sup> in its preamble stated that environmental right provided in Article 44 and 92 of constitution of FDRE require that human and animal health, environment well being and, in general, the socio-economic condition of the country be protected from risk that may arise from modified organism. The proclamation provides clear well-defined objective<sup>205</sup> and define terms including the Cartagena Protocol. The point of defined the protocol might serve that during implementation of the proclamation in order to take in to account the values and principles of protocol.

The Cartagena protocol is a comprehensive version of biosafety and has provided the impetus for the drafting of a biosafety proclamation and a number of directives.<sup>206</sup> One of the progressive

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<sup>201</sup> *Supra note* 146, Fikremarkos and Imiru p.146-147

<sup>202</sup> *Ibid.*

<sup>203</sup> *see*, Article 13 ITPGR, and *supra note* 172, As the IBD ABS legal experts explained the issue they try to reconsider to amend the law entirely and incorporate several provision, see also *supra note* 124 Fikremarkos & Imiru

<sup>204</sup> *see*, Biosafety Proclamation No 655/2009 Federal Negarit Gazeta, 15th year No 63

<sup>205</sup> *see*, article 4, *The entire objective of the law is protection human and animal health and biodiversity and the environment and local communities and the communities at large from adverse effect modified organism*

<sup>206</sup> *see*, Wondwossen Sintayehu Wondemagegnehu, Development of an analytical tool to assess *Biosecurity* legislation. *Ethiopia Country Study* Development Law Service FAO Legal Office. p. 105

features of biosafety proclamation is that it is translated into multiple forms of directives and each of them regulates specific issues.<sup>207</sup> In this regard, the biosafety law might consider as a comprehensive full-fledge legal regime which contains basic provisions based on precautionary and prevention principle to prevent potential harm and that would be a model to the rest of legislation.

There are also Forest proclamation and Wildlife Proclamation in support of the implementation of some of international obligation that emanates from different agreement those we have seen above. Forest proclamation was enacted in assuming that as forest products plays a significant role in the enhancement of national economy, and sustainable utilization of forest is to be through ensuring public participation and benefit sharing. Further, the law intended to harmonize forest development to harmonize with other economic sector particularly; Agriculture and rural development policy. It contains 24 articles and it is divided into four parts and provides for important provisions in regarding promotion of forest development, as to conservation and administration of state forest. It has also administrative and procedural rules such as prohibition, product movement permit, license requirement, power and function of the ministry (Indeed, now these power and function is entrusted to MEF) and penalty. It also empowered the ministry to issue a directive for the proper implementation of forest proclamation.

As far as international law compliance concerned Ethiopia is still attempting to fulfill the obligations. It is true that, the *raison d'être* of forest legislation is not international obligation. It is possible to say that enforcing this law as it is may amount to indirectly implementing of IEL. However, in general the law has been working for forest development and conservation, through public participation and benefit sharing scheme despite the fact that there are no such provisions

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<sup>207</sup> *see*, DIRECTIVE No. ONE DIRECTIVE ISSUED TO DETERMINE THE CONTENTS OF APPLICATIONS FOR UNDERTAKING TRANSACTIONS INVOLVING MODIFIED ORGANISMS, DIRECTIVE No. TWO DIRECTIVE ON RISK ASSESSMENT PARAMETERS FOR MODIFIED ORGANISMS, DIRECTIVE NO. THREE A DIRECTIVE ISSUED TO DETERMINE THE PROCEDURES OF A RISK MANAGEMENT STRATEGY FOR DEALING WITH ACCIDENTS INVOLVING MODIFIED ORGANISMS, DIRECTIVE No. FOUR A DIRECTIVE ISSUED TO DETERMINE THE REQUIREMENTS FOR THE TRANSPORT OF MODIFIED ORGANISMS and, DIRECTIVE No.FIVE A DIRECTIVE ISSUED TO DETERMINE THE STORING AND PROCESSING OF MODIFIED ORGANISMS

and system as to how the community can participate and share the benefit. Technically, the law has lacks an essential elements; scope and objective provisions often time these draw a precise area to be addressed.

When we come to wildlife proclamation the objective of enactment is clearly stated; to conserve, manage, develop and proper utilization of wildlife and to discharge government obligation assumed under treaties, further to promote wildlife based tourism. It is similar to forest development in relation to the pattern of legislation. The wildlife proclamation contains 20 articles and four parts and each of them provides separate issues in single area. But, still I have idea why this law is treated apart from the biodiversity legal regime, since as far as the matter is concerned it shall included under the IBC auspicious and should be treated as any GRs law.

A national pesticide law should clearly indicate its objectives in the preamble or other introduction.<sup>208</sup> The preamble is not a legally binding provision, but serves as a policy statement capturing the purposes and objectives of the law.<sup>209</sup> The preamble might state that the law is designed to assist the country in the meeting its international obligations and to protect human health and the environment from the danger of inappropriate pesticide management. It might also indicate that the law is designed to address all aspects of the pesticide lifecycle.<sup>210</sup> Pesticide registration and Control Proclamation No 674 is introduce in the preamble of the its objectives, its target is to lay down a scheme of control which would minimize the adverse effect pesticide use might cause human being, animals, plant and environment and necessary to regulate the activities and related matter to it and to enact a comprehensive legislation to regulate the lifecycle of pesticide and other matter related thereto.<sup>211</sup>

Provision on the scope of a national pesticide law, describe what the law will cover or not cover. The scope provides information about the pesticide products and substances to which the law applies and the targeted activities relating to pesticide management across the pesticide

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<sup>208</sup> *see*, Designing National Pesticide Legislation by *Jessica Vapnek, Isabella Pagotto , Margaret Kwoka* for the Development Law Service FAO Legal Office, FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS Rome, 2007 FAO Legislative study. p.31

<sup>209</sup> *Ibid.*

<sup>210</sup> *Ibid.*

<sup>211</sup> *see*, The Pesticide Registration and Control proclamation 674/2010 Para 2 and 3

lifecycle.<sup>212</sup> The draft proclamation prepared in 2009 included a section on the scope which served to (i) specify the area covered by the proclamation, and (ii) establish the responsibility of the ministry of agriculture to implement the whole text. This section on the draft proclamation was removed from the text during the preparation by the ministry of agriculture, in view of the potential overlapping with the constitutional powers of the regional governments.<sup>213</sup> As a result, the proclamation lacks a section on the scope. The products regulated by the proclamation are only clarified by the definition of the law in article 2. Furthermore, the responsibility of ministry of agriculture to coordinate implementation of the proclamation is not clearly stipulated.

For the sake interpretation, a comprehensive pesticide law should include a section with updated definition of all relevant terms. The Basal, Rotterdam, and Stockholm Conventions each have their own definitions. In addition, international bodies often elaborate glossaries and other guidelines on terminology which can assist in the formulation of the definition sections of national law.<sup>214</sup> To the extent possible, the definitions in the national pesticide law should be in harmony with the code of conduct, which, although non-binding, reflect an international consensus on the definition of terms.<sup>215</sup>

In connection with definition, the proclamation accommodates basic technical and non technical terms including Basal, Rotterdam, and Stockholm Conventions.<sup>216</sup> The proclamation provide the regulatory framework on pesticide registration, competence certificate and provides provisions of dealing with import, disposal, safety measures and establish pesticide advisory board. Further, it contain different administrative, procedural and penalty provisions. A modern pesticide legal framework must reflect a country's international obligation while effectively addressing the country's particular circumstances.<sup>217</sup> The main law and its accompanying instruments should

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<sup>212</sup> *Supra note 208.*

<sup>213</sup> Stakeholder discussion during regulation preparation held in September 2014 at Debre Zeit, In fact the reason was not convincing, because it has nothing to do with constitutional power in the federal arrangement see article 51 of the constitution the matter is obviously federal matter Moreover, it has an elements of international trade and therefore, it is clearly a federal subject matter. See also The FDRE Constitution article 51 in conjunction with 92.

<sup>214</sup> *Supra note 208.* p. 31

<sup>215</sup> *Ibid*

<sup>216</sup> *Supra note 78*, Article 2. Further, it was become more comprehensive than now, if it had referred international instrument or a scientific community glossaries and acknowledged terminologies as it was suggested by intergovernmental organization experts.

<sup>217</sup> *Supra note 208*, p. 31

take into account the economic and social situation as well as any specific technical requirements in the country, such as the crops grown, pest problems, dietary patterns, toxicity of the required pesticides, level of literacy, climate and environmental situation.<sup>218</sup>

The key reference for the design of a pesticide import/export scheme should be the Rotterdam Convention, as it governs the international trade of pesticides.<sup>219</sup> Each state party must implement the PIC procedure for the pesticide listed in Annex III of the convention.<sup>220</sup> This means that the national pesticide authority must notify the secretariat regarding whether the consent to the import of each newly listed chemical and if so, under what conditions<sup>221</sup> To implement the convention, the national pesticide law should list prohibited imports and, more generally, forbid the import of defective or substandard products, with criteria clearly established in the law.<sup>222</sup> In this research I attempted to identify a number of drawbacks with the legislative framework and alternative solutions to facilitate implementation are suggested.

#### **Banned Pesticide:**

One of the tasks that are normally included within the tasks of the ministry is the possibility to ban certain pesticides. Banned pesticides should not only include pesticides banned by International Convention, but also pesticides which the Ministry may consider harmful for the Ethiopian Context. In the current proclamation, there is no clear provision that enables the ministry to ban pesticides except only scattered references to banned pesticides in definition part article 2(4) and it is the same to severely restricted pesticides.

Obligation in relation to imports of chemicals listed in Annex III seems addressed by article 17 which deals about import permit is necessarily required to make import order. That imply import permit is similar to the procedure of PIC, the PIC procedure is a means for formally obtaining and disseminating the decision of importing countries as to whether they wish to receive future shipment of certain chemical and ensuring compliance to those decisions by exporting countries.<sup>223</sup> The aim is to promote a shared responsibility between exporting and importing

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<sup>218</sup> Ibid

<sup>219</sup> Ibid. p.50

<sup>220</sup> Ibid

<sup>221</sup> Ibid, *see* Arts. 10.2 and 10.4

<sup>222</sup> Ibid

<sup>223</sup> *see*, Furqan Ahmad, *Legal Regulation of Hazardous Substances*, Daya publishing House Delhi- 2009, p. 64-65

countries in protecting human health and the environment.<sup>224</sup> However, this provision did not suffice to the convention demand, a state party to adopt a final regulatory action specifically as regards annex III and do not give much guidance as to PIC procedure banned and severely restricted pesticides (Banned and severely restricted pesticides).<sup>225</sup> Despite the fact that, define PIC in the definition section, the law does not set a clear procedure for banned or severely restricted chemicals or does not clearly refer to follow the procedure which is provided in the convention and further who is going to be responsible to undertake the procedure in relation consent as to import and ban of products.

### **Prohibitions:**

The prohibitions related to pesticide use are included in article 31, which refers to sub article 1, prohibition to import, store, transport or offer for sale pesticides which are not packed or labeled as prescribed; sub article 2 adulterated pesticides; sub article 3 banned pesticide; and severely restricted pesticide.

a. There is no coherence between the provisions import permit and prohibition of unregistered pesticides.

b. there is no provision on power of the Ministry to approve a list of banned pesticides.<sup>226</sup> As a result, only pesticides that have been banned by international conventions to which Ethiopia is part will be considered banned pesticides. However, the proclamation would benefit from including references to directives and regulations.

The legislative measures would suppose to be consistent with national policy and international obligation. It is necessary to note that these principles are relevant in developing sound chemical management. They are also an essential requirement to protect human, plant health and the environment and equally important to make a balance with competing interest *inter alia* trade, investment and economic development in general.

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<sup>224</sup> Ibid

<sup>225</sup> Assuming the purpose of PIC procedure, the proclamation was expected to indicate the idea either on the preamble or on some specific provision, (such as article 17) and make it clearer and laid down the details, so as to give information.

<sup>226</sup> The Ministry assume as a competent authority, yet the power to ban is vested to council of minister in adopting regulation to this effect(article 2.4), However, the Convention suggestion was state party shall assign to the competent authority all necessary control power, including the power to inspect, charge fees and elaborate regulation(which includes list a banned pesticide and enact subordinate legislation)

Legislative implementation requires a state to take measure, adoption of national legislation which comes from international obligation that finds a way to integrate in to national context. There is an obligation to enact enabling legislation to inter in to the national legal framework or give a legal basis to implement in domestic context. Therefore, the legislation implementation we have seen in general perhaps has proven the attempt of the country to comply with the obligations that emanate from MEAs. As discussed in brief, significant progress has been achieved. However, the legislation are not to some extent comprehensive, consistent and most of them are silent about the MEAs implementation it can be said that this is the common feature most of the legislation shared. The other legislation measure, even though it does not refer to any convention is the Pollution protection proclamation and its subsequent regulation on industrial pollution. It can be considered as a measure that Ethiopia incorporate common principles and norms and techniques into its' environmental legal regime.

## **B. Administrative Implementation**

Within the environmental governance, it is an administrative authorities of the state upon which fall many of practical issues of implementation and enforcement.<sup>227</sup> This suggests the development of functional horizontal cooperation at the sub state level.<sup>228</sup> IBC has its different work process and sections to undertake the regular task, conservation, sustainable utilization and ABS in five sections; crop, forest, microbial and animal, and access to GRs and benefit sharing are engaged in the conservation and sustainable utilization(identify components of Biodiversity and monitor through sampling and other technique) and the benefit sharing directorate is dedicated to administer the conserved material and give an access and regulate the activities; administer the conserved resources, regulate access to local and international negotiation for commercial and development purpose.<sup>229</sup> In relation to administering ABS the institute had a problem, it lacks negotiation skill and experience as a result Ethiopia might lack bargaining

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<sup>227</sup> *see*, CATERINE REDGWELL, National Implementation, The oxford Handbook of International Environmental Law, OXFORD UNIVERSITY PRESS, 2007 p. 931.

<sup>228</sup> *Ibid*.

<sup>229</sup> Interview with Anteneh Tamirat, ABS directorate Microbiologist at IBC Addis Ababa, (November 21, 2014) The directorate adhere to regulate ABS, for ex; ban the product which are comes from abroad or produce within the country based on safety measures, in accordance with law and standard may give a permission access to GRs, deal over the benefit sharing and sign a Standard Material Transfer Agreement(SMTA), follow the procedure of PIC in connection with import and export, and many others. , see also ABS Proclamation, and subsequent Regulation No 169/2009

power and that possibly hinder the benefit Ethiopia deserve likewise a *teff* varieties registered IPRs by Dutch's company abroad,<sup>230</sup> Awareness on the concept of ABS also an important concern since it is a new concept and it should be mainstreamed into the society and there is also a gap in stakeholders coordination.<sup>231</sup>

For example CBD member states are expected to develop national strategic plan or programme for the implementation.<sup>232</sup> Therefore this obligation which derived from the CBD requires an administrative implementation. In saying this, Ethiopia's National Biodiversity Strategic Action Plan (NBSAP) provides for an implementation mechanism.<sup>233</sup> The implementation process, it is recommended that a Biodiversity steering Committee was established at the Federal level. This committee will provide high-level policy guidance and will create a linkage mechanism to Environmental council.<sup>234</sup> It may introduce appropriate arrangements to ensure that the environmental consequences that are likely to have significant adverse impacts on biological diversity are duly taken into account.<sup>235</sup>

Further, recently new National Biodiversity Strategic Action Plan is under preparation, it passes through several steps and rounds of stakeholders discussion and which contains the last five years trend of implementation and the way forward for the next ten years and, the document is submitted to language editing and it will be expected to the CBD secretariat by January 2015 and so IBC will enter in to implementation phase as well.<sup>236</sup> Given the previous practice and

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<sup>230</sup> Ibid.

<sup>231</sup> Ibid. He explain further the issue is not the concern of only biodiversity, it has different stakeholder interest and requires their involvement. For ex; investment, trade, research and innovation institutions should have to also participate in the whole system.

<sup>232</sup> *Supra note* 32, article 6 of the CBD

<sup>233</sup> *Supra note* 13 p.75-77

<sup>234</sup> Ibid. p. 75.

<sup>235</sup> Ibid.

<sup>236</sup> Interview with Dr Misikir Tessema, National Biodiversity Strategic Action Plan programme Coordinator at IBC Addis Ababa November 24, 2014, The writer of this work try to update this part of the research rely on the newly developed NSAP, however, the document is still officially unrevealed. See also the summary of content on Fifth country report to the CBD In Ethiopia, revision of National Biodiversity Strategy and Action Plan 2011–2020 started in 2012 and is finalized in June 2014. During the revision process, appraisal data were collected from respective regional and federal government offices, NGOs and private sectors. The collected data were analyzed and stocktaking report was produced out of which draft national biodiversity strategy was synthesized. The draft strategy contained the national biodiversity resource base, and its values, status, trends as well as cause and consequences of the biodiversity loss in the country. It was based on the shared global vision, mission and strategic goals, and contained 16 draft national targets. The strategy was presented to stakeholders at the first national stakeholders' workshop. The stakeholders' reviewed the draft Strategy and suggested two additional targets to be included in the

experience, hopefully in the newly developed NSAP Ethiopia suppose assume to introduce better approach than the previous one at least, in relation to integrating appropriate economic sectors and in to national development and poverty reduction.

The other point in relation to administrative implementation is the interface between the CBD ITPGR. Generally, IBC prepare annual work plan in connection with the three pillars of CBD which derived from the establishment proclamation.<sup>237</sup> The work plan prioritizes the activities based on 3E, Economic importance, Endangered and Endemic because it is not possible to conserve all the available GRs within the country in terms of resources.<sup>238</sup> Further, particularly IBC since its establishment protects and conserves the biodiversity on both plots of *in situ* and *ex situ*.<sup>239</sup>

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document. After the review, the stakeholders' comments were incorporated in the document and the strategy containing 18 targets and their corresponding actions was devised.

For each action, lead and collaborator implementing institutions, and implementation period have been proposed. It also contained implementation arrangements. The revised draft NBSAP of Ethiopia was presented at second national stakeholders' workshop and comments of the stakeholders were incorporated into the strategy document. The document so finalized contains 18 targets, 41 indicators and 59 actions (Annex I).available <http://www.cbd.int/doc/world/et/et-nr-05-en.pdf>, accessed in October 15, 2014 p. 25.

<sup>237</sup>Ibid, see also proclamation No 381/2004, art 6.

<sup>238</sup>Ibid.

<sup>239</sup>see, Fifth Country report, Ethiopia has so far established several protected areas (PAs) which include 21 national parks, two sanctuaries, three wildlife reserves, 20 controlled hunting areas, six open hunting areas, six community conservation areas and 58 national forest priority area of which 37 are protected forests (Young, 2012; IBC, 2012a). Proportion of area of the country covered by PAs varies from one source to the other. According to IBC (2009), it covers 19.05% of the country. According to EWCA (2012), however, PAs of Ethiopia constitute 14% of area of the country. The variation in proportion of PAs emanated from continuing re-demarcations of the PAs that have been conducted since 2009. Since 2009, establishment of different types of new PAs is underway in different national regional states. Semien-Gibe and Garameba are community conservation areas that are established in SNNPRs during this period. In Amhara national regional state, PAs such as Bakussa national park and Menz Guassa community conservation area have got recognition by the council of the national regional state, and surveillance is completed for other potential conservation areas such as Wef Washa, Guna, Weleka Abay and others. In Oromia national regional state also, Dati Wolel and Arsi Mountains national parks were established within the stated period (Young, 2012). Ethiopia is working towards improving the status of PAs. Re-demarcation of seven PAs, namely: Semien Mountain, Alatish, Gambella, Kafta-shiraro and Bale Mountains national parks as well as Babille Elephant and Sinkele Swayne's Hartebeest Sanctuaries have been completed while that of others is underway (Young, 2012). Moreover, clearing of the invassive species and restoration of degraded lands of Babille Elephant Sanctuary and Yangudi-rasa, Omo, Awash and Nech-sar national parks has been carried out in the last five years. see further In Ethiopia, over 75,000 accessions of plants have been conserved under *ex situ* conditions in cold storage and field gene banks so far. Of these, about 12,000 accessions have been collected and conserved in the last five years. Within this period, 381 microbial species belonging to bacteria, fungi and microalgae have been conserved *ex situ* in national gene bank. Moreover, five new field gene banks have been established to conserve coffee, medicinal plants and forest species. Ranches have also been established in different parts of the country between 2009 and 2014 for conservation and sustainable utilization of Begait, Borena, and Horro cattle breeds. Semen has been collected and cryo-conserved from Fogera, Begait, Sheko and Irob indigenous cattle breeds. Construction of duplicate gene bank is underway at Fiche town to ensure the safety of *ex situ* collections.

It has frequently been suggested that promoting an integrated approach to the exploration, conservation and sustainable use of plant genetic resources for food and agriculture and in particular, as appropriate developing and maintaining appropriate policy and legal measures that promote the sustainable use of plant genetic resources for food and agriculture are requires for the effective implementation of both instruments.<sup>240</sup> The integration process is already established within the internal working procedure that IBC explore and conserve GRs are accessible to the research for ensuring food security and further innovation.<sup>241</sup>

The IPGR is also implemented in harmony with CBD. In connection with the ITPGR, IBC vigorously attempt to collect, explore and characterize, evaluated and documented GRs then it makes the resources accessible to the research Ethiopia Institute of Agricultural Research(EIAR) for further research and varieties improvement in order to ensure food security based on the treaty underlined purpose.<sup>242</sup> Moreover, IBC and EIAR have a work relationship within internal administration, the relation is established trough business process re-engineering and the later can officially access the GRs as of right those materials are relevant to food and agriculture and but only for the development and academic activities they undertake within the country.<sup>243</sup> In connection with characterization, there are two types of characterization the first is morphological characterization, it is established by visual observation of such as flower, leaf, root, fruit and the physical appearance to determine the category or character, second type is

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Eight *in situ* conservation sites are under establishment to conserve enset, durum wheat, teff, coffee, medicinal plants and forest plant species. In addition, six community gene banks, botanical gardens and bio-parks have been established in different parts of the country since 2009.

Three *in situ* sites have been established to conserve alkaline water ecosystems which contain unique micro-algal biodiversity at Lakes Chitu, Arenguade and Killole between 2012 and 2013. In addition, three Lakes have been managed through ecosystem approach in Afar national regional state within the same period. Similarly, 13 *in situ* conservation sites have been established for cattle, sheep, goat and chicken breeds between 2009 and 2013.(Fifth country report p. 34/35)

<sup>240</sup> *see*, Article 5 and 6 and see also Decision of Conference of the parties No X/2, Strategic Plan for Biodiversity 2011-2020, available <http://www.cbd.int/decision/cop/?id=12268> accessed September 26, 2014.

<sup>241</sup> *Supra note*, 236, Interview with Dr. Misikir Tessema

<sup>242</sup> *Ibid.*

<sup>243</sup> *Ibid. see* ABS proclamation article 11(4) and 15. In relation to ITPGR, EIAR also participate in general, in the implementation of the treaty and since its establishment(1960), the institute undertaken research and adopt agricultural technology. Moreover, it has several center of excellencies aim to engage in particular specialization of seed improvement and preservation, for E.g.; Ambo Research Center for Plant protection, Kulumsa Research Center for Wheat and Chiro Research Center for Sorgham. It has also ensured IPRs and registered in the National Plant Varieties Book which was improved by researchers. I have also observed sample preservation in Agricultural Technology Museum at head office Addis Ababa(November 28, 2014) it demonstrates research finding such as Cereal Crop, Oil crop, Tomato, Onion and Forest and aromatic cereal.

molecular characterization, which takes place using laboratory examination at a molecular level that process enable to identify for further degree of certainty than morphological and the materials can only be characterized on the basis of scientific consideration involving technologies and chemicals to determine its uniqueness. These process requires technology, chemicals and experts however the institute has only one molecular biologist, add to this the chemical and technology are also expensive.<sup>244</sup> Accordingly, the proper functioning of IBD depends much more on the availability of technology and resources. These are the problems IBC faced in connection with implementing the treaty effectively.

The main obligation of Ethiopia with regards to Rotterdam Convention obligation is information exchange and PIC procedure. The procedure that is implemented in response of the convention through MEF is an administrative nature that has not yet adopted as rules. MEF receives the information to give the consent for chemicals used to agriculture, health and industry, based on the re-informed agreement. It followed from the fact that, after examining the information on the Material Data Safety Sheet (MDSS) and the sample of product.<sup>245</sup> Among the criteria observed in the re-informed agreement are manufacturing dates (only consent give to product, if it has been qualify Art. 17. 3(a) of pesticide control and registration proclamation), standard labeling which has to been certified in country of origin. As regard to information exchange system, indeed there is a system including early warning within the Ministry, it is also supported by industrial pollution regulation, however, the ministry failed to work to address the public.<sup>246</sup> Accordingly, the ministry has an implementation plan in the budget year to establish current data base, and inform to the treaty body as well as address the general public concerning the stockpile of hazardous chemical and pesticide.<sup>247</sup>

### **C. Judicial Implementation**

Besides administrative implementation there are also a means to ensure implementation of environmental law. The law that protect, regulates, control and manage the environment has a

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<sup>244</sup> Ibid, *see also* Proclamation 120/1998, article 7(3) The institute shall have the necessary staff. *see also* Fikremarkos and Imiru. *supra* note 146.

<sup>245</sup> Interview with Getachew Meren Environmental Law compliance and Assessment and Follow-up expert at MEF, Addis Ababa November 27, 2014.

<sup>246</sup> Ibid. *see also* Industrial pollution council of minister regulation No 158/2008

<sup>247</sup> Ibid.

grievance hearing or dispute settlement procedures. Ethiopian environmental governance system had an administrative and *quasi-judicial procedure* over disputes settlement and grievances.<sup>248</sup>

However, if that might not been resolved to the parties' satisfaction in the stage of administrative or quasi-judicial authority, so disputes may goes to court of law. In Ethiopia environmental law legal framework there is a rule<sup>249</sup> that allow to institute a case against the polluter irrespective of having vested interest.<sup>250</sup> This rule of standing which allow everyone to institute a case, it is in order to encourage operators to adopt measures and develop practices to minimize the risk of environmental damages so that their exposure to financial liability is reduced.<sup>251</sup> In general, the Ethiopian legal system apparently does not suffer from the standing related obstacles to access to justice in environmental matters, however, there is a gap, if one look closer and make more analysis on it particular by particular.<sup>252</sup>

Regarding the application of this judicial implementation of environmental rights there is one noble case in Ethiopian; it was a first occasion to Ethiopian's jurisprudence. The case was initiated by Action Professional Association Program(APAP), against EPA alleged that EPA was not discharge of the authority's function in connection with polluting the river of *Akaki* and *Modjo* and its effect on the health and livelihood of the people living in the respective area. That was initiated from the environmental right perspective, asserted that possible enforcement of a fundamental right to a clean and healthy environment within the constitution. EPA defense was based on two grounds, the first was challenging the admissibility of the case that EPA wouldn't be a defendant since it is not polluter, and the second defense was on the merit of the case. It

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<sup>248</sup> See for example pollution Control proclamation, article 11, even though it is a technique Environmental Impact Assessment process also can be consider as an administrative measure and In most of the legislation all the prohibitions, and other administrative remedies are available before the case going to judicial tribunal.

<sup>249</sup> see, Environmental Pollution Control Proclamation No. 300/2002, Federal Negarit Gazeta 9thYear No. 12, The pollution protection proclamation has also the concept in its Article 16 the fundamental principles of environmental law 'Polluter pay principle' and the 'principle of preventive action' in its Article 3 (4) and (5) respectively.

<sup>250</sup> see, Environmental Pollution Control Proclamation No. 300/2002, Federal Negarit Gazeta 9thYear No. 12. Article 11, see, Ethiopian Civil Procedure Code Art, 33 (2) see also Blak's Law Dictionary 7th edition definition of *Vested Interest* An interest the right to enjoyment of which, either present or future, is not subject to happening of a condition of present. However I would like to appreciate examine the concept of vested interest, vested interest doesn't mean necessarily right must be arise from the statutory provision, we have clear understanding that people living in certain locality or administrative boarder have a vested interest over the surrounding environment, so that I didn't accept the technical language of vested interest concerning environmental issues.

<sup>251</sup> see, Paul Stookes, A Practical Approach to ENVIRONMENTAL LAW, Oxford University press, p.475

<sup>252</sup> see, Dejene Girma Janka (PhD), *Remedies for Environmental Wrong-doings in Ethiopia*, Mekelle University Law Journal Vol.2 No. 1 (2013) , p. 23-24

argued that the statutory duties of the EPA are different from the allegation and it did nothing with the alleged wrongful act.<sup>253</sup> Unfortunately, the case was rejected on the first ground of preliminary objection that was inadmissible. Though, APAP submits its appeal to the federal high court that request to overrule the first instance court decision. The high court confirmed the lower court decision and the cassation division of Supreme Court also come up with the same result.<sup>254</sup>

The case eventually demonstrate that the mere declaration of provision of *locus standi* allow citizens to file Public Interest Litigation(PIL)for alleging the polluter cannot avert environmental degradation, ensure implementation of existing legislation. Regarding this matter Ethiopia may obtain much lesson from other country's experience in enforcement of environmental matter whether in perspective of human right or development. Indian Green Court was establish with a view to progressive enrichment of the environmental jurisprudence with principles like sustainable development, polluter pays, public trust doctrine, precautionary principle and intergenerational equity.<sup>255</sup>

The idea of PIL of Ethiopia is apparently similar with India yet the details of procedure and structure of the court quit different. Indian Green Court has the power to refer scientific and technical aspects for investigation and opinion to expert bodies such as the Appellate Authority under the National Environmental Appellate Authority Act and the power to direct the Central Government to determine and recover the cost of remedial measures from the polluter.<sup>256</sup>

The *locus standi* requirements in case of original petitions will be as flexible and wide as in case of PIL before the Constitutional Courts. Any person or organization who or which is interested in the subject matter or in public interest may approach the court subject to the exception that the courts may inflict exemplary costs in case of frivolous or vexatious litigation.<sup>257</sup> Green Court is not be bound to follow the rules of evidence laid down in Indian Evidence Act, 1872, and would

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<sup>253</sup> see, Sisay Alemayehu Yeshanew, 'Action Professionals' for the People V. Ethiopia Environmental protection Authority: A torchbearer or a Lost Opportunity? Essays on Environmental Rights Ethiopian Human Right Law Series School of Law Vol IV, p. 70-75

<sup>254</sup> Ibid.

<sup>255</sup> see, Raghav Sharma, 'Green Courts in India: Strengthening Environmental Governance?', 4/1 *Law, Environment and Development Journal* (2008), available at <http://www.lead-journal.org/content/08050.pdf>. p. 50.

<sup>256</sup> Ibid.

<sup>257</sup> Ibid.

be able to formulate their own procedural norms.<sup>258</sup> The Green court will be able to consult experts outside the statutory body of Commissioners. The Judges and Commissioners will have the necessary powers to make spot inspections and record oral evidence. Conciliation and mediation at any stage of the proceeding, original or appellate, shall be encouraged. However, in all cases, the fundamental principles of natural justice will be adhered to.<sup>259</sup>

In Ethiopia there is no specialized environmental court even in the concept. Courts only be bound by general rules of civil procedure while they treat environmental issue. The APAP case was ruled on that basis. In this instance, either at the request of one of the parties or if the court had been flexible on the proceeding for the sake of justice in distinguish indispensable party, there were a chance to call the polluter to intervene in the proceeding.<sup>260</sup> However, the parties and the court strictly stick on the rule of procedure, instead interpreting Art. 40 of civil procedure code and 11 of the proclamation as a procedural rule *lex specials*, in light its purpose and spirit which itself provides for the very special nature of situation.

In this juncture, two significant issues have been reflected. First, there has been progressive development in recognition of the standing, the law provided to any interested party to challenge private and public actions detriment to the environment, which shows to some extent government commitment to access to justice.<sup>261</sup> Second, nonetheless to the first development the existing procedural rules and undeveloped jurisprudence of the country, leads the situation contrary to the right guaranteed under the constitution and pollution control proclamation.

Courts may put a lot of contribution and play fundamental role in determining a dispute over substantive norms of environmental and social and economic nature and therefore, the procedural and evidence rule of proceeding in relation to environment would be in particular

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<sup>258</sup> Ibid.

<sup>259</sup> Ibid.

<sup>260</sup> *see*, Ethiopian Civil Procedure Code Art. 40 such a procedure allows to the court to make more harmonious and effective judgment on the basis of the direct and indirect interest of all involved parties. *see also supra* note 115. p 76-85.

<sup>261</sup> *Supra note* 253 Sisay Alemahehu, After introducing in 2002 under the pollution control proclamation, later on it was also reaffirmed particularly in the Council of Minister Industrial Pollution Regulation No 159/2008, Art. 10. in the administrative regulatory mechanism.

simplified and flexible as possible to give an effect to the substantive norms.<sup>262</sup> UNEP recommend in its guide line that, states within their national jurisdictions, can consider developing consistent definitions and actions such as penalties and court orders, with a view to promoting a common approach to environmental law violations.<sup>263</sup>

#### 4.4.2 Implementation Techniques

Many of the regulatory frameworks in relation to environment contain different mechanism to achieve environmental protection objectives. The general consensus of international arrangement requires to comply such a mechanism *inter alia*; operation authorization or license revocation(that must equally apply for both public or private entity), EIA, Information Exchange and prior informed consent procedure, environmental standard setting, revocation of authorization, prohibition, restriction, liability for damage, and criminal sanction. These and other unmentioned implementation techniques have been incorporated in Ethiopia environmental legal regime. In fact, unless the existing techniques within the laws of environment should have to enforce strictly, otherwise the mere presence of general provisions is not by itself assurance for successful environmental protection.

#### I. Environmental Impact Assessment (EIA)

It has been discussed some point in the previous section of this paper as to EIA proclamation, and subsequent implementation directive and guideline.<sup>264</sup> EIA is very essential process to take technical and systematic inquiry before make a decision over the major policy, program and project of an environmental, social, and economic and development.<sup>265</sup> CBD requires parties to

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<sup>262</sup> The role of the court would be consistent with the substantive norm recognized in all instrument, national, regional and international and it is better to prevail the objective of the law in due course so as to ensure sustainability of development in general.

<sup>263</sup> *see*, UNEP GUIDELINES ON COMPLIANCE WITH AND ENFORCEMENT OF MULTILATERAL ENVIRONMENTAL AGREEMENTS, Para 46.

<sup>264</sup> *see*, A DIRECTIVE NO 1/2008. A DIRECTIVE ISSUED TO DETERMINE PROJECTS SUBJECT TO ENVIRONMENTAL IMPACT ASSESSMENT, *see also* ENVIRONMENTAL IMPACT ASSESSMENT PROCEDURAL GUIDELINE Series 1 November, 2003 ADDIS ABABA *see also* Dejena Girma(PhD) *Supra note* 14, for detail discussion p. 47-52

<sup>265</sup> *see*, Vic president judge Weeramantya discuss in the case *Concerning GabCikovo-Nagymaros Project (Hungary v. Slovakia), Judgment* ) there is always the need to weigh considerations of development against environmental considerations, as their underlying juristic bases - the right to development and the right to environmental protection - are important principles of current international law. He continue giving a detail analysis as to the concept of sustainable development and EIA connection nor was the principle without influential voices in its support from the developed world as well. Indeed, the genealogy of the idea can be traced much further back even to the conceptual

identify 'processes and categories of activities which have or are likely to have significant adverse impacts on the conservation and sustainable use of biological diversity, and monitor their effects through sampling and other techniques' and to require environmental impact assessment of proposed projects that are likely to have 'significant adverse effects on biological diversity'.<sup>266</sup> It is one of Ethiopia's earliest commitments to undertake EIA which came into being when it ratified the Convention on Biological Diversity in 1994 to protect and conserve Biological Diversity.<sup>267</sup> Let's turn to conduct a quick inquiry if Ethiopia had specific EIA in order to address the CBD. As far as IBCR concerned, one of the problematic areas in relation to implementation of CBD is the absence of EIA system which addresses issues specific to the biodiversity conservation and sustainable utilization.

The problem in relation to EIA strained, in the one hand, a technical sophistication of identifying the activities have potential adverse effect on biodiversity.<sup>268</sup> On the other hand, there is a political problem to disclose the activities which has a direct adverse impact over the GRs conservation and sustainable utilization.<sup>269</sup> But we may need to find a buffer zone to justify and looking the general rules of EIA to plea the application on biodiversity; it is possible to cite the directive adopted by FEPA.<sup>270</sup> This directive seems a slippery slope, towards addressing the area of biodiversity, provided that 'any project planned to be implemented in or near areas designated as protected'. However, the problem has come out from the phrase of directive 'near the area designated as protected'. It requires to more clarification as to how far and near. What is the

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stages of the Universal Declaration of Human Rights, 1948. "*Development*" means, of course, development not merely for the sake of development and the economic gain it produces, but for its value in increasing the sum total of human happiness and welfare.

Further he argued that the process of EIA would be undertaken continuously and explain that "I wish in this opinion to clarify further the scope and extent of the environmental impact principle in the sense that environmental impact assessment means not merely an assessment prior to the commencement of the project, but a continuing assessment and evaluation as long as the project is in operation. This follows from the fact that EIA is a dynamic principle and is not confined to a pre-project evaluation of possible environmental consequences. As long as a project of some magnitude is in operation, EIA must continue, for every such project can have unexpected consequences; and considerations of prudence would point to the need for continuous monitoring." EIA, being a specific application of the larger general principle of caution, embodies the obligation of continuing watchfulness and anticipation. (GABCIKOVO-NAGYMAROS PROJECT (SEP. OP. WEERAMANTRY) p. 89- 113)

<sup>266</sup> see article 14 of the CBD

<sup>267</sup> *Supra* note 14, Dejene Girma(PhD) p. 26

<sup>268</sup> *Supra* note 236, Misikir Tessema(PhD)

<sup>269</sup> *Ibid.*

<sup>270</sup> see, A DIRECTIVE NO 1/2008. A DIRECTIVE ISSUED TO DETERMINE PROJECTS SUBJECT TO ENVIRONMENTAL IMPACT ASSESSMENT.

standard to be observed in relation to distance is, also still vague.<sup>271</sup> Though, there is a specific category in relation to EIA under the directive, yet it is inadequate in order to address biodiversity area specially the protected environment.

The Ethiopian Floriculture Association has developed a Code of Conduct that requires EIA for the purpose of accessing the EU market successfully.<sup>272</sup> The necessity of EIA is well recognized and aware to at least in the executive body level. It is clear that our economic foundation is our natural resources and that we are experiencing severe environmental degradation. At present, the best way to design and implement our development endeavors in the context of ecological and social realities is through EIA.<sup>273</sup> In these circumstance the concept of sustainable development may arise and EIA would become in to the forefront to compromise the two competing interest.

It is clear that investment can only be successful and profitable if it is conscious of its environmental and social realities and addresses them fairly and adequately.<sup>274</sup> Finding a shortcut by avoiding EIA may appear to be profitable, but from long-term perspective, it is suicidal. Unless there is sufficient knowledge on the main objective of EIA which is to attain economic development together with social development and environmental protection it will be hard to say that our development is a sustainable one.<sup>275</sup> For instance, a cement factory and many leather factories operating in the Lume woreda, Kurmafatole Kebele, didn't apply mitigation measures that would minimize negative Impact of their project on the environment because of the cost involved to implement the measures.<sup>276</sup> In general, study has revel many of the mega projects undertaken in the country has a practical EIA limitations and if there is any compliance it is

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<sup>271</sup> *see*, the list for example; Dam and reservoir construction (dam height 15m or more, reservoir storage capacity 3 million m<sup>3</sup> or more, or power generation capacity 10MW or more); Irrigation development (irrigated area of 3000ha or more); and Construction of roads (Design and Standard DS1, DS2, DS3) with a traffic flow of 1000 or more are quantified. However, projects implemented in or near the areas designated as protected are not quantified, whether it is just a uneven estimation or not is unknown.

<sup>272</sup> COUNCIL OF MINISTERS REGULATIONS TO PROVIDE FOR THE FLORICULTURE SECTOR CODE OF PRACTICE

<sup>273</sup> *Supra note* Melless & Mesfin. p. 40

<sup>274</sup> *Ibid*

<sup>275</sup> *Ibid*.

<sup>276</sup> *see* Implementations of EIA Laws in East Shawa Zone of Oromia National State Special Reference to Lume and Ada'a Woreda: Case Study on Various Projects Mandefro Sorecha Wodajo pp. 45-60.

bounded by conditionality of fund(most federal government projects do not pass through EIA unless some kind of external funding is involved).<sup>277</sup>

## II. Information Exchange and Prior Informed Consent Procedure

Information is crucial input in dealing with environmental issues, particularly on the making of decision or recommendation. Environmental information is a basic and mandatory requirement in formulating policy and programme that ensure the decision or program is depend upon accurate information. Information shows as to the statues of environment in general, and that help the decision maker to came up with well informed decision and articulated of policy and programme. Environmental information be gathered trough public participation and create awareness to the general public to participate in the protection and preservation of environment.<sup>278</sup>

Information exchange and prior informed consent procedures as implementation techniques elements have been well established. It is a fundamental means of implementation of Rotterdam convention.<sup>279</sup> In order to ensure the government had necessary information to assess the risks of hazardous chemical and to take informed decisions on their future import. The practice of information exchange and PIC in established and exercised based on the requirement of the Rotterdam convention. Before any chemical shipment which listed in Annex III, and restricted and severely restricted from export country it is subject to PIC and determined the consent to be import and register based on the information available on Material Data Safety Sheet (MDSS)which is usually contain a full information and accompanied by sample. However, the examination is undertaken only on the MDSS. As regards to chemical product sample, although

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<sup>277</sup> see, for example, *Supra note 14*, Dr .Dejena Girma p.155-167.

<sup>278</sup> see, UNEP GUIDELINES ON COMPLIANCE WITH AND ENFORCEMENT OF MULTILATERAL ENVIRONMENTAL AGREEMENTS There are around 9 technique we may use to disseminate information;

1. Information Exchange
2. Reporting
3. Consultation
4. Monitoring and surveillances
5. Notification of emergency situation
6. Public access to Environmental Information
7. public education
8. Ecolabing and
9. Ecoauditing

<sup>279</sup> see, Art 14 of the Rotterdam Convention

the importer is obliged to bring a sample, it is not scrutinize through laboratory test since there is no institutional setup to asses potential risk to the scientific certainty.<sup>280</sup>

### III. Prohibition

The prohibitive norm in general exists in most legislation and particularly environmental law. The approach is to provide a provision to disallow certain activities that might be harmful to the environment. The preferred technique was to identify an environmental target such as a limit on emissions of a pollutant to water or the air (the 'command'), with penalties that would be imposed if this target is not met (the 'control').<sup>281</sup> Direct regulation of this nature took a variety of forms, the most common of which involved environmental standards imposing uniform requirements relating to broad categories of activities.<sup>282</sup> The aim was to reduce environmental harm (primarily pollution to air and water) to a socially acceptable level.<sup>283</sup> Such an element of provision appears in many of our environmental legislation and to mention some of them; EIA proclamation Art.3 para.1 ....without authorization from the authority or from the relevant regional environmental agency, no person shall commence implementation of any project that requires environmental impact assessment as determined in a directive issued pursuant to article 5 of this proclamation. The provision provides EIA as a precondition to the commencement of projects and impliedly it could be a ground for revocation or other measures as a result of the contrary activity. Art 14 of forest development conservation and utilization proclamation Art. 31 of the proclamation of pesticide control and registration provided prohibition of activities listed, Pollution Control proclamation Art. 3 Para 1 also provide... No person shall pollute or cause any other person to pollute the environment by violating the relevant environmental standard.

Indeed, direct regulation in imposing technology-based standards on large industries, has sometimes achieved quite dramatic improvements in environmental performance.<sup>284</sup> In addition

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<sup>280</sup> *Supra note 245*, Gizachew Meren., see also, Art. 4 *para.2* of the Rotterdam Convention

<sup>281</sup> see, Neil Gunningham, Environment Law, Regulation and Governance: Shifting Architectures, *Journal of Environmental Law* 21:2 (2009), Published by Oxford University Press. p. 179-212, see also Peter Kunzlik\* Green Public Procurement European Law, Environmental Standards and 'What To Buy' Decisions, *Journal of Environmental Law* 25:2 2013. Published by Oxford University Press. p. 173-202.

<sup>282</sup> *Ibid.*

<sup>283</sup> *Ibid.*

<sup>284</sup> *Ibid.*

to the above mentioned, there are also other legislation in Ethiopia which provides similar regulation to regulate the environment.

#### **IV. Revocation of license or authorization**

Environmental law can be implemented in a different techniques, as we have seen in section one, the objective is to protect the environment by keeping an appropriate balance between environment and development. Having different techniques, revocation of license or authorization is also one of the techniques serving to maintain environmental standard as well. Under Ethiopia environmental regime several law contain such a provision. To give an example; Art.3(5) pollution control proclamation also stipulates that..... any activity poses a risk to human health or to the environment, the authority or the relevant regional environmental agency shall take any necessary measure up to the closure or relocation of any enterprise in order to prevent harm. Further, this provision contains two options so as to protect the environment and human health from harmful activities. However, while the relevant authority or agency exercising its power and function, the sequence of measures and remedies available seem scattered and irregular. Moreover, what will be an administrative procedures and methods those officials should follow during exercising their power,.....*shall take any necessary measure.....*(emphasis added)is unclear and that leads a wide discretion.

Article 11 of pesticide registration and control proclamation also preferred suspension and cancellation of registration as a standard implementation technique and also provided in article 15 how the competence assurance certificate issued and carry out the business and how that possibly might be revoke as a result of non-compliance. However, the practicality of Art 15(4) is still unsettled due to the absence of regulation.

#### **V. Liability for environmental damage**

Liability rules at the domestic or international level serve a variety of purposes. They may be a form of economic instrument which provide an incentive to encourage compliance with environmental obligations.<sup>285</sup> They may also be used to impose sanctions for wrongful conduct, or to require corrective measures to restore a given environmental asset to its pre-damage

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<sup>285</sup> *Supra* note 43, p. 869-870

condition.<sup>286</sup> Finally, they may provide a technique for internalizing environmental and other social costs into production processes and other activities in implementation of the polluter-pays principle.<sup>287</sup>

Principle 13 of the Rio Declaration provides that: states shall develop national law regarding liability and compensation for the victims of pollution and other environmental damage.<sup>288</sup> The concept of liability for damage was introduced in Ethiopia before the current environmental law regime has come to exist, it was conceived in the civil code as absolute liability that arise from an activity in which he engages.<sup>289</sup> It became more solid and more specific in the pollution control proclamation and later solid waste management proclamation also follow the trend in Art.16. The law that provides liability for environmental damage has adopted and appeared as equal as Polluter Pay principle.<sup>290</sup> Further it asserted as far to the closer or relocation of any enterprise in order to prevent harm, the approach of this provision is coined an alternative in the one hand provide a sanction of closure, if they don't comply to the law, on the other hand, the relocation of enterprise in order to prevent harm. The later one is a much progressive caution measure for the protection of environment.

## VI. Criminal liability

Apart from civil liabilities, environmental law can be strengthen its implementation by making a '*due notice of the penalties*'. With regard to criminal law aspect, in as much as preservation of

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<sup>286</sup> Ibid.

<sup>287</sup> Ibid.

<sup>288</sup> Ibid, *see also* the following elements the nature and elements of civil liabilities suggested by P. Sand For state and civil liability, international rules address certain substantive and procedural elements which determine the nature and extent of the liability. The common issues which emerge are:

- \_ whether to designate environmental damage as a distinct head of damage (separate from personal injury and property damage);
- \_ defining environmental damage;
- \_ establishing the standard of care (absolute, strict or fault);
- \_ establishing the measure of damages;
- \_ identifying the person or persons against whom the claim should be brought;
- \_ determining who may bring a claim;
- \_ designating the forum or fora before which claims may be brought;
- \_ determining the remedies which are available; and
- \_ providing for the availability of certain defenses.

<sup>289</sup> *see*, Art. 2027( 2) and 2069 of The civil code of Ethiopia enacted in 1960

<sup>290</sup> Pollution control proclamation Art. 3. 4*Control of Pollution* ,4. Any person who causes any pollution shall be required to clean up or pay the cost of cleaning up the polluted environment in such a manner and within such a period as shall be determined by the Authority or by the relevant regional environmental agency. When any activity poses a risk to human health or to the environment, the Authority or the relevant regional environmental agency shall take any necessary measure up to the closure or relocation of any enterprise in order to prevent harm.

public order depends up on the compliance with certain rules, these rules have be made known. Accordingly, the penal code gives '*due notice of offense*'.<sup>291</sup> It informs the citizen of how they are expected to behave and call their attention to the rules the infringement of which is deemed contrary to the general interest.<sup>292</sup>

In addition to the new criminal code of Ethiopia,<sup>293</sup> in connection with environmental regulation we count up several activities constitute as an offence under environmental legal regime and provides penalties. For Example; Art. 12. of Pollution control proclamation Art. 18 of EIA Proclamation, Art 35 of ABS proclamation, Art 16. of Development Conservation and Utilization of Wildlife Proclamation Art 20 of the Forest development conservation and utilization proclamation, Art.33 of pesticide registration and control proclamation, Art 17 of solid waste management proclamation, and Art. 21 of biosafety proclamation are contains criminal liabilities.<sup>294</sup>

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<sup>291</sup> *see*, Philip Graven, An Introduction to Ethiopian Penal Law, Published by The Faculty of Law Haileselassie I University, Addis Ababa Ethiopia p. 6 *see also supra* note 252 p. 13-14.

<sup>292</sup> *Ibid*, It is possible to say that polluting the environment in a series manner might be contrary to the general interest, and that would be an offence against public interest.

<sup>293</sup> *see*, The criminal code of FDRE proclamation No 414/ 2004, Title III Chapter I Section I, in particularly Art. 516 -522 provided a criminal offence against public health and environment.

<sup>294</sup> *Supra* note 252. p. 13-14.

## Chapter Five

### 5. 1 CONCLUSION AND RECOMMENDATION

This research has focused on national implementation measures that attempt to respond the requirements of CBD, ITPGR, and Rotterdam Convention. The thesis has also outlined that; Ethiopia is a party to those agreements and which demonstrates those agreements are duly ratified. Besides, it has shown that the Constitution establishes a straightforward rule regarding the status of international agreement. By declaring "all international agreement ratified by Ethiopia are an integral part of the law of the land" to have the force of law, the supremacy clause makes them enforceable under the legal sphere in the same manner as statutes.

I focused on, legislative, administrative and judicial setup and the effect of these measures on the implementation of environmental law. Starting from the constitution, it is true that environmental rights are protected and the country has tried to establish a system in all environmental aspects such as adopting policies, enacting different laws and re-establishing institutions to enforce the provisions in those laws and policies. With respect to implementation mechanism, there are viable legal and administrative frameworks, both substantively and procedurally.

The research has found that, several implementation measures are endorsed and realized and that helps directly to address the requirements of the agreements and indirectly support to the fulfillment of Ethiopia obligations. However, in general, they are not comprehensive and sophisticated, due to the inadequacy of implementation instrument, some issues are not yet addressed. Therefore, it has to build sufficient and comprehensive legislation (implementation instruments, rules and regulation and directive) which enables to address specific aspects of environmental matter and that recognizes and indicates the specific role of MEAs during implementation.

It is the research finding that, both lack of full-fledged legal regime and enforcing capability which persist in the system has been an impediment to the effective implementation of MEAs and that requires expanding and multiplying the laws and strengthening the capacity of implementation institution. Moreover, the limitations of each of the major gaps identified in the

previous chapter, leads to a plea for revision and expansion of some laws as well as producing new laws.

Implementation of MEAs in Ethiopia falls on the above limitations, and hence, I recommend with no particular order of priority, the following,

1. ABS law should be revised to incorporate the omitted issues discuss before. For instance its scope should be widen to clear up all the questions involved in relation to matters, such as trade, and investment. Further, the drafter has to bear into mind suggest and remind that the roles and specific application of the CBD, the *seed treaty* including Nagoya and Cartagena protocols, the provisions in the preamble or operational text of the law.

2. It is important to note that, the objectives of CBD, conservation and sustainable utilization of biodiversity can be also protected by law to give equal effect as ABS. The government needs to adopt a specific directive of EIA, which will have only specific application to biodiversity and enforcing it effectively.

3. Integrated chemical management policy has been suggested to handle hazardous chemical issues and hence, Ethiopia needs to revisit its policy and legal framework, since the mere control and registration of pesticide proclamation can't address the concern and suffice the Rotterdam convention implementation requirement. Moreover, the country needs to set a procedural rule and list, for banned and severely restricted chemical in relation to imports.

4. Implementation institutions must to strictly enforce laws and implantation techniques provided by law. Their capacity should also be strengthen. Moreover, the government must have to allocate clear power and mandate among them in order to avoid redundancy and save resources. The government has to adopt special procedure and rules of evidence in regard to entertain and settle the dispute of environmental nature.

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- Anteneh Tamirat, Microbiologist Access Benefit Sharing directorate at IBC in Addis Ababa (November 21, 2014).
- Getachew Meren, Environmental Law compliance and Assessment and Follow-up expert at Ministry of Environment and Forestry in Addis Ababa (November 27, 2014).
- Lecture note Audiovisual Library of International Law, [Legal.un.org/avi/environmental-law.html](http://Legal.un.org/avi/environmental-law.html).
- Class lecture March, 2013 of International Environmental law class Addis Ababa University Dr, Dereja Zeleke.